

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ANNEXING CERTAIN
REAL PROPERTY COMMONLY KNOWN AS TRACT 10137-THE HARMONY PROJECT
(PROJECT NO. 2709) INTO CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO.
2008-1, ANNEXATION NO. 1**

WHEREAS, D.R. Horton BAY, Inc., is the owner of certain real property commonly known as Tract 10137-the HARMONY Project (APN No. 086-41-020, 086-41-021, 086-41-022), more specifically described in the annexation map attached as Exhibit 1.A. to this Resolution; and

WHEREAS, on November 11, 2011, the City Council approved the Tentative Map, Site Development Permit, and Conditional Use Permit for Tract 10137-the HARMONY Project, a residential subdivision with 276 single-family attached townhomes & condominiums, private streets and associated common area improvements located on 12 acres at the westerly side of McCandless Drive; and

WHEREAS, on January 6, 2009, the City Council created by Resolutions numbered 7815 and 7816 and on January 29, 2009, the City Council created by Ordinance 278 the City of Milpitas Community Facilities District No. 2008-1 ("CFD 2008-1") pursuant to the Mello-Roos Community Facilities Act of 1982, California Government Code Section 53311 *et seq.* Each fiscal year, a special tax is levied on all assessor's parcels of residential property in CFD 2008-1 in an amount determined by the Council, as described in the attached Exhibit 1.B. to this Resolution; and

WHEREAS, pursuant to the Mello-Roos Community Facilities Act, the City Council also established a procedure to allow and provide for the annexation of parcels within the boundaries of CFD 2008-1 in the future without additional hearings, upon the unanimous approval of the owner or owners of each parcel or parcels at the time that parcel or those parcels are annexed, pursuant to Government Code Section 53339.7; and

WHEREAS, D.R. Horton BAY, Inc., now voluntarily seeks to annex its property to CFD 2008-1 and to be subject to the levy of a special tax thereunder.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Legally valid and unanimous consent to the annexation of real property identified as Assessor's Parcel No. 086-41-020, 021 and 022 into CFD 2008-1 has been given, as set forth in the Consent and Election to Annex Real Property To an Existing Community Facilities District, attached as Exhibit 1. All prior proceedings and actions taken by the City Council pursuant to the Mello-Roos Community Facilities Act and this Resolution were and are valid and in conformity with state and local law.
3. The City Council hereby declares and determines that the territory comprising Annexation No. 1, as described in Exhibit 1.A., is now added to and becomes a part of CFD 2008-1. City staff is hereby directed to include the property in the annual assessment. In no event shall the annual per-lot assessment exceed the maximum amount authorized by the engineer's report for the CFD

2008-1 in any given fiscal year. Exhibit 2 attached hereto is provided to show all parcels that have been annexed to the CFD 2008-1.

4. The City Clerk is hereby directed to record an amendment to the Notice of Special Tax Lien within fifteen (15) days of the adoption of this Resolution with the Office of the County Recorder. The City Clerk is further directed to file a certified copy of the map, attached as Exhibit 1.A., and Exhibit 2, within fifteen (15) days of the adoption of this Resolution with the Office of the County Recorder.
5. The City Clerk shall certify the adoption of this Resolution.
6. This Resolution shall take effect immediately upon adoption.

PASSED AND ADOPTED this _____ day of _____, 2012 by the City Council by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Michael J. Ogaz, City Attorney

EXHIBIT 1

CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO AN EXISTING COMMUNITY FACILITIES DISTRICT CITY OF MILPITAS COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES)

TO: CITY COUNCIL OF THE CITY OF MILPITAS IN ITS CAPACITY AS THE LEGISLATIVE BODY OF
THE ABOVE ENTITLED COMMUNITY FACILITIES DISTRICT:

1. The undersigned is the owner (the "Owner"), or the duly authorized representative of the Owner, of the real property as described in **Exhibit 1.A.** attached hereto and incorporated herein by reference (the "Property"), and in such capacity, possesses all legal authority necessary to execute this Consent and Election as and on behalf of the Owner in connection with the annexation of the Property to the District (as defined below).

The Owner is: D.R. Horton BAY, Inc.

2. The Owner is aware of and understands the following:
 - A. The City of Milpitas has conducted proceedings pursuant to the "Mello-Roos Community Facilities Act of 1982", (Government Code Section 53311 and following) (the "Act") to form a community facilities district known and designated as COMMUNITY FACILITIES DISTRICT NO. 2008-1 (PUBLIC SERVICES) (the "District") to finance the increased demand for public services (the "Services") resulting from new development within the District. The services to be financed by the CFD comprise services ("Services") authorized to be financed pursuant to Section 53313 and 53313.5 of the Government Code. CFD 2008-01 shall finance Services only to the extent they are in addition to those provided in the territory of CFD 2008-1 before the CFD was created and such Services may not supplant services already available within CFD 2008-1 when the CFD was created. For a full and complete description of the public services, reference is made to the final CFD Report, a copy of which is on file in the Office of the City Clerk. For all particulars, reference is made to said CFD Report.
 - B. The City has also undertaken proceedings pursuant to Article 3.5 of the Act to provide for the future annexation of certain territory, including the Property, to the District. On January 6, 2009, the City held a public hearing as required by the Act, to consider the future annexation of such territory, including the Property, to the District. Notice of such hearing was given in the form and manner as required by law. A protest to such future annexation was not received from 50% or more of the registered voters, or six registered voters, whichever is more, residing in the territory proposed to be annexed in the future or the owners of one-half or more of the area of land in the territory proposed to be annexed in the future. At the conclusion of such public hearing, the legislative body of the City did approve and provide for the annexation in the future upon the unanimous approval of the owner or owners of each parcel or parcels at the time that such parcel or parcels are annexed, without additional hearings.

THE UNDERSIGNED DOES HEREBY CERTIFY UNDER PENALTY OF PERJURY AS FOLLOWS:

3. The Owner consents and elects to and expressly approves annexation of the Property to the District and the authorization for the levy of the Special Tax within the Property without further public hearing and without an election conducted pursuant to the provisions of Government Code Section 53339.7 and Article 2 of the Act and the Elections Code of the State of California. Owner agrees and intends that such consent and approval constitutes Owner's election to annex the Property to the District and to approve the authorization for the levy of the Special Tax within the Property.
4. The Owner waives any right, which the Owner may have to make any protest or complaint or undertake any legal action challenging the validity of the proceedings of the City or the District to authorize the future annexation of the Property to the District or the authorization for the levy of the Special Tax within the Property, any necessity, requirement, right or entitlement for further public hearing or election pertaining to the annexation of the Property to the District and the levy of the Special Tax within the Property.
5. The Owner specifically authorizes the levy of the Special Tax on the Property pursuant to the rate and method of apportionment set forth in **Exhibit 1.B.** to pay for the authorized Public Services.

EXECUTED this 18th day of June, 2012, in Pleasanton, California.

D.R. Horton BAY, Inc., a Delaware Corporation



BY: Dean K. Mills
Assistant Vice President

Note:

1. Signatures of property owner(s) or representatives must be notarized.
2. Proof of Authorization to sign is required for Corporations, Partnerships, Limited Liability Companies, Trusts, etc.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1180

State of California

County of Alameda

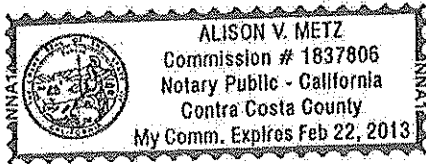
On June 18, 2012 before me, Alison V. Metz, Notary Public

Date

Here Insert Name and Title of the Officer

personally appeared Dean K. Mills

Name(s) of Signer(s)



who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: Alison V. Metz

Signature of Notary Public

Place Notary Seal Above:

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER
Top of thumb here

EXHIBIT 1.A.

**CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO AN EXISTING
COMMUNITY FACILITIES DISTRICT**

CITY OF MILPITAS

**COMMUNITY FACILITIES DISTRICT NO. 2008-1
(PUBLIC SERVICES)**

ANNEXATION NO. # 1

Assessor's Parcel No.

086-41-020, 21 and 22

Name of the Owner

**DR Horton Bay, Inc
A Delaware corporation**

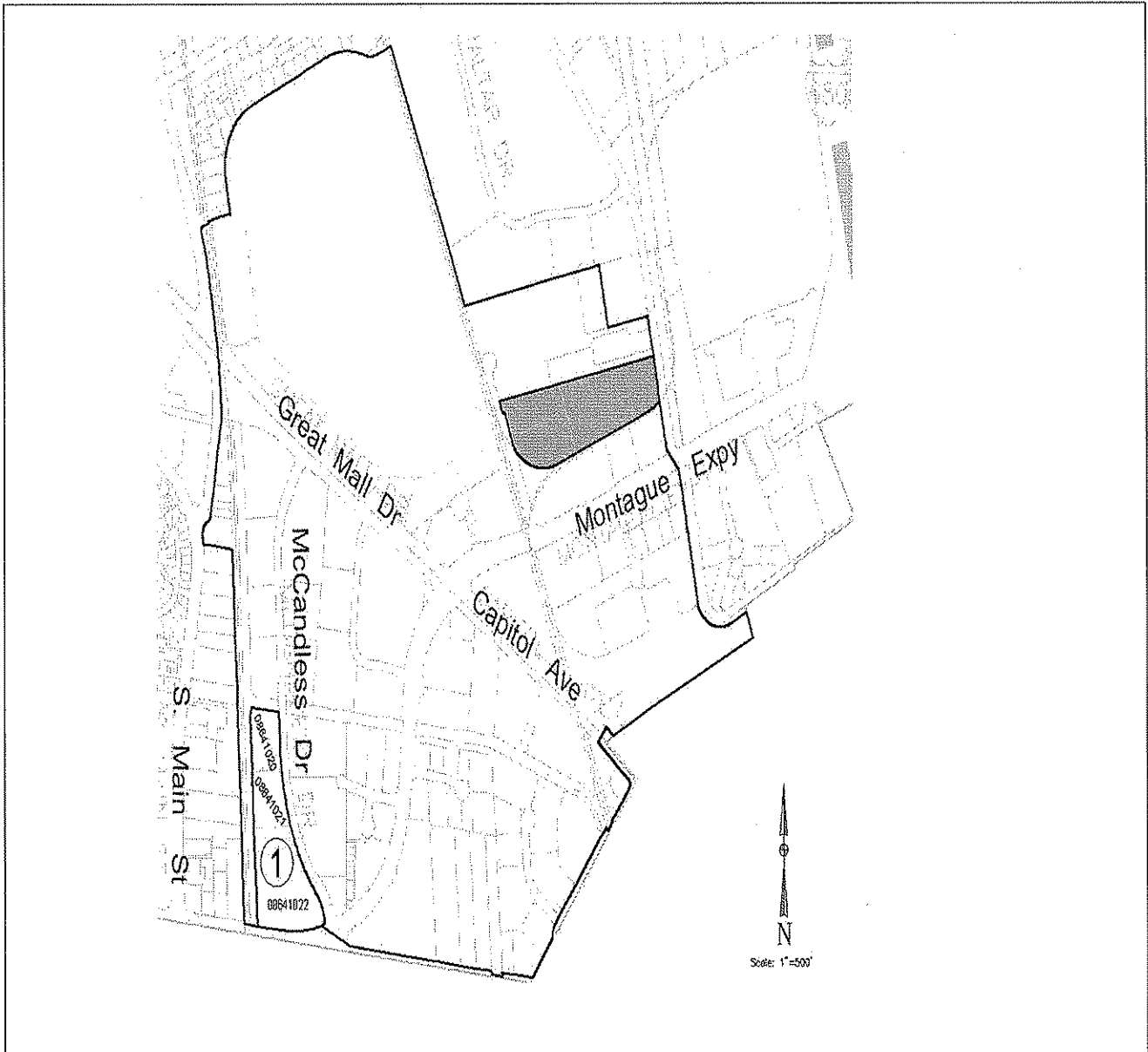


EXHIBIT 1.B.

**CONSENT AND ELECTION TO ANNEX REAL PROPERTY TO AN EXISTING
COMMUNITY FACILITIES DISTRICT**

CITY OF MILPITAS

**COMMUNITY FACILITIES DISTRICT NO. 2008-1
(PUBLIC SERVICES)**

RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A. Special Tax as hereinafter defined shall be levied on all Assessor's Parcels of Residential Property in City of Milpitas Community Facilities District No. 2008-1 (Public Services) ("CFD No. 2008-1"), and collected each Fiscal Year commencing after adoption of CFD 2008-1, in an amount determined by the Council through the application of the appropriate Special Tax, as described below. All of the real property in CFD No. 2008-1, unless exempted by law or by the provisions hereof, shall be taxed for the purposes, to the extent and in the manner herein provided.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

"Act" means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, Division 2 of Title 5 of the Government Code of the State of California.

"Administrative Expenses" means the following actual or reasonably estimated costs directly related to the administration of CFD No. 2008-1: the costs of computing the Special Taxes and preparing the annual Special Tax collection schedules (whether by the City or any designee thereof or both); the costs of collecting the Special Taxes (whether by the City or otherwise); the costs to the City, CFD No. 2008-1 or any designee thereof of complying with City, CFD No. 2008-1 or obligated persons disclosure requirements associated with the Act; the costs associated with preparing Special Tax disclosure statements and responding to public inquiries regarding the Special Taxes; the costs of the City, CFD No. 2008-1 or any designee thereof related to an appeal of the Special Tax; and the City's annual administration fees and third party expenses. Administrative Expenses shall also include amounts estimated or advanced by the City or CFD No. 2008-1 for any other administrative purposes of CFD No. 2008-1, including attorney's fees and other costs related to commencing and pursuing to completion any foreclosure of delinquent Special Taxes.

"Affordable Housing" means any Dwelling Units located on Residential Property that are subject to deed restrictions, resale restrictions and/or regulatory agreements recorded on the property that provide housing for persons that meet the Low, Very Low, and/or Extremely

Very Low income levels pursuant to, as applicable, California Health & Safety Code Sections 50093, 50079.5, 50105, or 50106. The Fiscal Year after the January 1 following the termination of the agreement containing covenants or similar instrument, a Dwelling Unit shall no longer be considered Affordable Housing.

"Annexation Parcel" means any parcel that is annexed to the CFD after it is formed.

"Annual Costs" means for each Fiscal Year, the total of 1) Authorized Services 2) Administrative Expenses; and 3) any amounts needed to cure actual or estimated delinquencies in Special Taxes for the current or previous Fiscal Year.

"Authorized Services" mean those services, as listed in the resolution forming the CFD.

"Assessor's Parcel" means a lot or parcel shown on an Assessor's Parcel Map with an assigned Assessor's Parcel number.

"Assessor's Parcel Map" means an official map of the Assessor of the County designating parcels by Assessor's Parcel number.

"Base Year" means the Fiscal Year beginning July 1, 2009 and ending June 30, 2010.

"Certificate of Occupancy" means a certificate issued by the City that authorizing the occupancy of a Dwelling Unit.

"CFD Administrator" means an official of the City, or any designee thereof, responsible for determining the Special Tax Requirement and providing for the levy and collection of the Special Taxes.

"CFD" means City of Milpitas Community Facilities District No. 2008-1 (Public Services) of the City.

"City" means the City of Milpitas.

"Consumer Price Index" means, for each Fiscal Year, the Consumer Price Index published by the U.S. Bureau of Labor Statistics for All Urban Consumers in the San Francisco-Oakland-San Jose Area, measured as of the month of February in the calendar year that ends in the previous Fiscal Year. In the event this index ceases to be published, the Consumer Price Index shall be another index as determined by the CFD Administrator that is reasonably comparable to the Consumer Price Index for the San Francisco-Oakland-San Jose Area.

"Council" means the City Council of the City, acting as the legislative body of CFD No. 2008-1.

"County" means the County of Santa Clara.

"County Median Income" means the current median income for the County of Santa Clara as determined by the U.S. Department of Housing and Urban Development.

"Developed Property" means, for each Fiscal Year, all Assessor's Parcels of Residential and Non-Residential Property for which a Certificate of Occupancy, or equivalent certificate, was issued before February 1 of the prior Fiscal Year, but not earlier than January 1, 2009.

"Dwelling Unit" means a building or portion thereof designed for and occupied in whole or part as a residence or sleeping place, either permanently or temporarily, by one family and its guests, with sanitary facilities and one kitchen provided within the unit. Boarding or lodging houses, dormitories, and hotels shall not be defined as Dwelling Units unless the land use permit specifies a residential use.

"Extremely Low-Income Affordable Housing" means Affordable Housing suitable for households with incomes at or below 30% of the County Median Income.

"Fiscal Year" means the period starting July 1 and ending on the following June 30.

"Land Use Class" means the land use class into which an Assessor's Parcel of Residential Property has been assigned.

"Low-Income Affordable Housing" means Affordable Housing suitable for households with incomes at or below 80% of the County Median Income.

"Maximum Special Tax" means, for each Fiscal Year, the maximum Special Tax, determined in accordance with Section C, below, that can be levied on any Assessor's Parcel of Residential Property.

"Market-Priced Residential Property" means Residential Property not classified as Affordable Housing.

"Non-Residential Property" means, for each Fiscal Year, any Assessor's Parcel of Developed Property which is not a Residential Property.

"Property Owner Association Property" means, for each Fiscal Year, any Assessor's Parcel within the boundaries of CFD No. 2008-1 that is owned by or irrevocably offered for dedication to a property owner association, including any master or sub-association.

"Proportionately" means that the ratio of the actual annual Special Tax levy to the Maximum Special Tax is equal for all Assessor's Parcels of Residential Property.

"Public Property" means, for each Fiscal Year, (i) any property within the boundaries of CFD No. 2008-1 that is owned by or irrevocably offered for dedication to the federal government, the State, the City or any other public agency; provided however that any property leased by a public agency to a private entity and subject to taxation under Section 53340.1 of the Act, as such section may be amended or replaced, shall be taxed and classified in accordance with its use; or (ii) any property within the boundaries of CFD No. 2008-1 that is encumbered by an unmanned utility easement making impractical its utilization for other than the purpose set forth in the easement.

"Residential Property" means, for each Fiscal Year, any Assessor's Parcel of Developed Property for which a Certificate of Occupancy has been issued for purposes of allowing residents to inhabit one or more residential Dwelling Units.

"Second Family Unit" means an attached or detached additional residential dwelling unit on a single-family residential Developed Parcel. The Second-Family Unit is not considered a Dwelling Unit in terms of assigning the Maximum Annual Special Tax.

"Services" means services that CFD No. 2008-1 is authorized to fund. These services may include: a) police protection services, criminal justice services-jails, detention facilities and juvenile halls, b) fire protection & suppression services and ambulance & paramedic services, c) maintenance and lighting of parks, parkways, streets, roads, street landscaping and open space, d) flood and storm protection services-operation and maintenance of storm drainage systems, and e) services related to removal and remedial action for cleanup of any hazardous environmental substances.

"Special Tax" means the special tax to be levied in each Fiscal Year on each Assessor's Parcel of Residential Property to fund the Special Tax Requirement.

"Special Tax Requirement" means that amount to be collected in any Fiscal Year for CFD No. 2008-1 to pay for certain costs as required to meet the needs of CFD No. 2008-1 in that Fiscal Year. The costs to be covered shall be the costs of (i) Services, and (ii) Administrative Expenses; less (iii) a credit for funds available to reduce the annual Special Tax levy, if any, as determined by the CFD Administrator.

"State" means the State of California.

"Tax Category" means the four categories of housing Dwelling Units shown in Table 1.

"Tax Collection Schedule" means the document prepared by the Administrator for the County Auditor-Controller to use in levying and collecting the Special Taxes each Fiscal Year.

"Tax Escalation Factor" means an annual percentage increase in the Maximum Annual Special Tax Rate per Unit based upon the Consumer Price Index (CPI) (as of February, San Francisco, All Urban Consumers (CPI-U) Index), the CPI (prior calendar year annual average, San Francisco, All Urban Wage Earners and Clerical Workers), or 2 percent, whichever is greater. The Tax Escalation Factor is applied each Fiscal Year following the Base Year.

"Taxable Parcel" means any Parcel that is not a Tax-Exempt Parcel

"Tax-Exempt Parcel" means a Parcel not subject to the Special Tax. Tax-Exempt Parcels are Public Parcels (subject to the limitations set forth below), Undeveloped Parcels, and nonresidential use parcels, such as commercial, office, industrial, etc.

"Undeveloped Property" means, for each Fiscal Year, all property not classified as Residential Property, Non-Residential Property, Public Property, or Property Owner Association Property.

“Very Low-Income Affordable Housing” means Affordable Housing suitable for households with incomes at or below 50% of the County Median Income.

B. ASSIGNMENT TO LAND USE CATEGORIES

Each Fiscal Year, all Assessor's Parcels, as applicable within CFD No. 2008-1, shall be classified as Residential Property, Non-Residential Property, Undeveloped Property, Public Property, or Property Owner Association Property. However, only Residential Property shall be subject to annual Special Taxes in accordance with the rate and method of apportionment determined pursuant to Sections C and D below. Residential Property shall be assigned to Land Use Classes 1-4, as listed in Table 1, below.

C. MAXIMUM SPECIAL TAX RATE

1. Developed Property

a. Maximum Special Tax

The Maximum Special Taxes for Residential Property are shown below in Table 1, based on the Land Use Class in which such Residential Property has been assigned. Under no circumstances shall a Special Tax be levied on Non-Residential Property, or for renovations to an existing Dwelling Unit located on Residential Property.

TABLE 1

**Maximum Special Taxes for Developed Property
For Base Year 2009-10
Community Facilities District No. 2008-1**

Land Use Class	Land Use Type	Maximum Special Tax Per Dwelling Unit
1	Market-Priced Residential Property	\$510.00 per Dwelling Unit
2	Low- Income Affordable Housing (80% of Market)	\$408.00 per Dwelling Unit
3	Very Low-Income Affordable Housing (50% of Market)	\$255.00 per Dwelling Unit
4	Extremely Low-Income Affordable Housing	\$0.00 per Dwelling Unit

b. Increase in the Maximum Special Tax

On each July 1, commencing on July 1, 2010, the Maximum Special Taxes set forth above shall be increased annually by the greater of the change in the San Francisco-Oakland-San Jose Area Urban Consumer Price Index during the twelve months prior to February of the previous Fiscal Year, or two percent (2%).

2. Undeveloped Property, Non-Residential Property, Public Property or Property Owner Association Property

No Special Taxes shall be levied on Undeveloped Property, Non-Residential Property, Property Owner Association Property, Public Property or Residential Property assigned to Land Use Class 4.

D. METHOD OF APPORTIONMENT OF THE SPECIAL TAX

Commencing with Fiscal Year 2010-11 and for each following Fiscal Year, the Council or its designee shall levy the annual Special Tax Proportionately for each Assessor's Parcel of Residential Property at up to 100% of the applicable Maximum Special Tax, until the amount of Special Taxes equals the Special Tax Requirement.

E. EXEMPTIONS

No Special Tax shall be levied on Undeveloped Property, Non-Residential Property, Public Property, Property Owner Association Property or Residential Property assigned to Land Use Class 4. However, should an Assessor's Parcel no longer be classified as Non-Residential Property, Public Property, Property Owner Association Property, or Residential Property assigned to Land Use Class 4, such Assessor's Parcel, if reclassified as Residential Property assigned to Land Use Classes 1, 2 or 3, shall be subject to the Special Tax. Furthermore, an Assessor's Parcel of Residential Property assigned to Land Use Classes 1, 2 or 3, if reclassified as belonging to a different Land Use Class, shall be subject to the Special Tax associated with its new Land Use Class.

F. APPEALS AND INTERPRETATIONS

Any landowner or resident may file a written appeal of the Special Tax on his/her property with the CFD Administrator, provided that the appellant is current in his/her payments of Special Taxes. During the pendency of an appeal, all Special Taxes previously levied must be paid on or before the payment date established when the levy was made. The appeal must specify the reasons why the appellant claims the Special Tax is in error. The CFD Administrator shall review the appeal, meet with the appellant if the CFD Administrator deems necessary, and advise the appellant of its determination. If the CFD Administrator agrees with the appellant, the CFD Administrator shall eliminate or reduce the Special Tax on the appellant's property and/or provide a refund to the appellant. If the CFD

Administrator disagrees with the appellant and the appellant is dissatisfied with the determination, the appellant then has 30 days in which to appeal to the Council by filing a written notice of appeal with the City Clerk, provided that the appellant is current in his/her payments of Special Taxes. The second appeal must specify the reasons for the appellant's disagreement with the CFD Administrator's determination. The decision by the Council shall be final. The CFD Administrator may charge the appellant a reasonable fee for processing the appeal.

Interpretations may be made by the Council by ordinance or resolution for purposes of clarifying any vagueness or ambiguity in this Rate and Method of Apportionment.

G. MANNER OF COLLECTION

The annual Special Tax shall be collected in the same manner and at the same time as ordinary *ad valorem* property taxes; provided, however, that CFD No. 2008-1 may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner if necessary to meet its financial obligations. In particular, the Special Tax for Affordable Housing may be collected off of the tax roll, to facilitate payment of the Special Tax by a party other than the property owner.

H. TERM OF SPECIAL TAX

The Special Tax shall be levied in perpetuity as necessary to meet the Special Tax Requirement.

**CERTIFICATION OF ADEQUACY OF CONSENT AND ELECTION TO ANNEX REAL
PROPERTY TO AN EXISTING COMMUNITY FACILITIES DISTRICT**

CITY OF MILPITAS

**COMMUNITY FACILITIES DISTRICT NO. 2008-1
(PUBLIC SERVICES)**

ANNEXATION NO. 1

The undersigned is the duly appointed CITY CLERK for the proceedings relating to the annexation of property to the District.

On the _____ day of _____, 2012, at MILPITAS, California.

CITY CLERK
CITY OF MILPITAS
STATE OF CALIFORNIA

Exhibit 2

SHEET 1 OF 1

Filed in the office of the City Clerk of the City of Milpitas this ____ day of _____, 2012.

City Clerk, City of Milpitas

I hereby certify Annexation Map No.1 as shown within the boundaries of City of Milpitas Community Facilities District No. 2008-1 (Public Services) as originally recorded of maps of assessment and community Book 44 Page 30 Facilities District, O.R., County of Santa Clara, State of California, was approved by the City Council of the City of Milpitas at a regular meeting thereof, held on the ____ day of _____, 2012, by its Resolution No. _____.

City Clerk, City of Milpitas

Filed this ____ day of _____, 2012, at the hour of ____ o'clock ____ m., in Book ____ of Maps of Assessment and Community Facilities Districts at Page ____ in the office of the County Recorder in the County of Santa Clara, State of California.




County Recorder,
County of Santa Clara

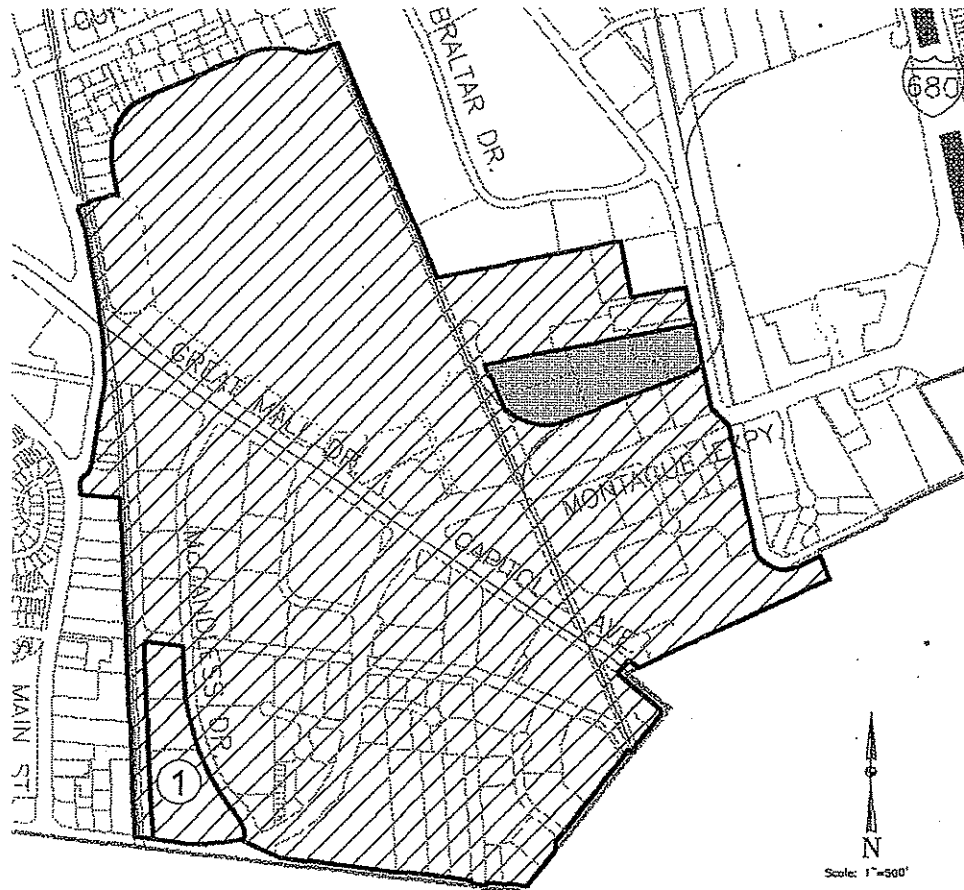
The boundary of Community Facilities District No. 2005-1 is co-terminous with the boundary of the City of Milpitas in _____, 2012.

Reference is hereby made to the Assessor maps of the County of Santa Clara for an exact description of the lines and dimensions of each lot and parcel.

The territory included in the Community Facilities District shall include only Santa Clara County Assessor's for the following Annexation Maps:
Initial formation CFD 2008-1 : 08632032, 08632033, 08632034, 08632035, 0832036
Map No. 1: 08641020, 08641021, 08641022
and all publicly owned areas in the City of Milpitas landscaped or capable of being landscaped, such as parks, parkways, street medians, interchange areas, light rail areas, open space and all similar areas. All other areas depicted on this map indicate territory that may be annexed to the Community Facilities District in the future.

Legend

-  Location of Initial Formation (Assessor Parcel No. 08632032, 08632033, 08632034, 08632035, 08632036)
-  Boundary of CFD 2008-1
-  Annexation No.



CITY OF MILPITAS ENGINEERING DIVISION

Approved: _____
City Public Works Director/City Engineer Date
Recommended for approval: _____
City Engineer Date
Drawn By: JAK Rev No. 001 2008-1 Sheet 1 of 1

Subdivider: D.R. Horton BAY, Inc

Project Name: HARMONY

File No. : 100.01.236

Private Job Account No.: 2709

Improvement Plan No.: 2-1162

Tract/Parcel Map No.: 1-236

Council Approval Date: 10/16/12

Completion Period: 4 years

CITY OF MILPITAS

SUBDIVISION IMPROVEMENT AGREEMENT

THIS AGREEMENT, executed this 16th day of October, 2012, at Milpitas, California, by and between the CITY OF MILPITAS, a municipal corporation of the State of California, (hereafter referred to as "City") and D.R. Horton BAY, Inc., a Delaware corporation (hereafter referred to as "SUBDIVIDER"):

R E C I T A L S

- A. SUBDIVIDER desires to subdivide certain land in the CITY in accordance with a map filed with the City Council of the CITY, marked and designated Tract No. 10137, Harmony.
- B. Said map shows certain streets and easements which are offered for dedication for public use.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein contained, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties do hereby agree as follows:

1. SUBDIVIDER agrees that it will construct at its sole cost and expense, all those certain improvements listed in the Improvement Plan No. 2-1162 consisting of approximately 43 sheets and specifications approved by said City Council on October 16, 2012, including setting survey monuments and identified by Project/Agency Fund Account No. 2709 (hereby referred to and made a part hereof the same as if set forth at length herein), and as set fourth in the conditions of approval for the SUBDIVIDER.
2. No improvement work shall be undertaken by SUBDIVIDER until all plans and specifications have been submitted to the City Engineer and have been approved by him/her in writing nor shall any change be made in said plans and specifications or in the work of improvement to be done under them without the prior written approval of CITY.
3. SUBDIVIDER agrees that said improvements will be constructed under and subject to the inspection of and to the satisfaction of the City Engineer.
4. SUBDIVIDER agrees that it will construct said improvements in accordance with the requirements set forth in said "Improvement Plans and Specifications" referred to above, all applicable local, state, and federal codes, ordinances, resolutions and orders of CITY enacted or adopted by said City Council as amended or revised as of the date hereof, and governing statutes of the State of California or of the United States of America.
5. SUBDIVIDER agrees that it will carry out and shall cause its contractors to carry out construction of the said improvements in conformity with all applicable laws and regulations, including without limitation, all applicable federal and state labor laws and standards.

SUBDIVIDER shall, and hereby agrees to indemnify, defend (with counsel approved by City/Agency),

protect and hold harmless the City, City Council, City Engineer or any other officer or employee of City ("Indemnitees") from and against any and all claims, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages, the failure to comply with any applicable state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to any applicable Prevailing Wage Laws, or any act or omission of Agency, City or Developer related to this Agreement with respect to the payment or requirement of Payment, if any, of prevailing wages (such claims referred to collectively herein as the "Claims"), whether or not any insurance policies shall have been determined to be applicable to any such Claims. It is further agreed that Agency and City do not, and shall not, waive any rights against Developer which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency or City, or Developer's deposit with Agency of any of the insurance policies described in this Agreement.

6. All said improvements shall be completed and ready for final inspection by the City Engineer **within 48 months** of the date of execution of this Agreement. If SUBDIVIDER shall fail to complete the work required by this Agreement within same time, CITY may, at its option, and after giving ten (10) days written notice thereof to SUBDIVIDER, complete the same and recover the full cost and expense thereof from SUBDIVIDER.
7. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY as obligee in the penal sum of seven million dollars, \$7,000,000, conditioned upon the full and faithful performance of each of the terms, covenants, and conditions of this Agreement and conditioned upon the full and faithful performance of any and all public improvement work required hereunder. The amount of seven million dollars is based on phase 1 for \$2.3 M, phase 2 for \$3.4 and off site for \$1.3M.
8. In the event that SUBDIVIDER fails to perform any obligation on its part to be performed hereunder, SUBDIVIDER agrees to pay all costs and expenses incurred by CITY in securing performance of such obligation, and if suit be brought by CITY to enforce this Agreement, SUBDIVIDER, agrees to pay costs of suit and reasonable attorney's fees to be fixed by the Court (provided that CITY is the prevailing party under any such suit).
9. Upon the execution of this Agreement, SUBDIVIDER shall file and submit security to CITY, as obligee, in the penal sum of seven million dollars, \$7,000,000, insuring to the benefit of any contractor, his subcontractors and to persons renting equipment or furnishing labor or materials to them for the cost of labor and materials furnished in connection with any and all improvement work required hereunder.
10. SUBDIVIDER agrees to pay all costs for labor or materials in connection with the work of improvement hereunder.
11. Any faithful performance security required hereunder shall be reduced to 10% of the security's original value for one year after the date of final completion and initial acceptance of said work to fulfill the one-year maintenance guarantee period for said improvements.
12. Prior to commencing any work, SUBDIVIDER agrees to obtain an Encroachment Permit from the Engineering Division and at SUBDIVIDER's expense, provide CITY with a duplicate public general liability and automobile liability insurance policy with endorsements showing the CITY as additional insured which insures CITY, its officers and employees against liability for injuries to persons or property (with minimum coverage of \$1,000,000 for each person and \$1,000,000 for each occurrence and \$1,000,000 for property damage for each occurrence) in connection with work performed by, for or on behalf of SUBDIVIDER. Said Policy shall: (a) be issued by an insurance company authorized to transact business in the State of California; (b) be written on the Standard California Comprehensive General Liability Policy Form which includes, but not limited to property damage, and bodily injury; (c) be written on an occurrence basis; (d) require thirty (30) days prior written notice to CITY of cancellation or coverage reduction; (e) provide that it is full primary coverage so that if said CITY, its officers and

employees have other insurance covered by said policy, said other insurance shall be excess insurance; (f) provide that said CITY, its officers and employees shall not be precluded from claim against other insured parties thereunder; (g) be maintained in effect until final acceptance of SUBDIVIDER's improvements. If SUBDIVIDER does not comply with the provisions of this paragraph, City may (at its election and in addition to other legal remedies) take out the necessary insurance, and SUBDIVIDER shall forthwith repay City the premium therefor.

13. SUBDIVIDER agrees that any general contractor engaged by the SUBDIVIDER for any work of improvement under this Agreement will have:

a) In full force and effect, a Worker's Compensation Insurance as shown by a Certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give CITY at least thirty (30) days prior written notice of the cancellation or coverage reduction of the policy.

or

b) In full force and effect, a Certificate of Consent to Self-Insure issued by the Director of Industrial Relations and certified by him to be current, together with a Declaration under penalty of perjury in a form satisfactory to the City Attorney that said Certificate is in full force and effect and that the SUBDIVIDER or its general contractor shall immediately notify the CITY in writing in the event of its cancellation or coverage reduction at any time prior to the completion of all work of improvement.

14. SUBDIVIDER agrees to indemnify and save harmless CITY, City Council, City Engineer or any other officer or employee of CITY from any and all costs, expenses, claims, liabilities or damages, known or unknown, to persons or property heretofore or hereafter arising out of or in any way connected with the act, omission or negligence of SUBDIVIDER, its officers, agents, employees, contractors or subcontractors or any officer, agent or employee thereof arising out of or related to this Agreement.

15. SUBDIVIDER agrees to comply with all special conditions and notes of approval for this development, pay all fees, and costs and expenses incurred by CITY in connection with said subdivision (including, but not limited to: office check of maps and improvement plans, field checking, staking and inspection of street monuments, construction water, wet taps, testing and inspection of improvement). SUBDIVIDER shall maintain Project/Private Job Account No. 2709 for this purpose with additional deposits as required by CITY.

A. Fees to be paid upon execution of this agreement:

a) Plan-check (PJ2709-13-2500)		<u>\$400,000.00</u>
b) Right-of-Way Reimbursement Fee	(310-3614-XXXX50)	<u>N/A</u>
c) Improvement Reimbursement Fee	(310-3614-XXXX70)	<u>N/A</u>
d) Other _____		<u>N/A</u>
	Sub-total	\$400,000.00

B. Fees to be paid at the time of building permit issuance:

a) Water Connection Fee	(402-3715)	<u>\$214,408.00</u>
(93 single @1910 + 183 multiple @1164 less 14328 @12.3 Ac)		

- b) Potable Water Meter Fee (400-3662) TBD
- c) Water System Capacity Impact Fee (402-3718) See Separate TASP agreement to be executed later
(To be adjusted by ENR at the time of payment)
- d) Recycled Water Meter Fee (406-3622) TBD
- e) Sanitary Sewer Connection Fee (452-3715) \$183,232.00
(93 single @1908 + 183 multiple @ 1406 less 20448 @ 12.3 Ac)
- f) Sewer Treatment Plant Fee (452-3714) See Separate TASP agreement to be executed later
(93 single @880 + 183 multiple @ 690 = \$289, 950 part of TASP)
- g) Sewage Capacity Impact Fee (452-3718) See Separate TASP agreement to be executed later
(To be adjusted by ENR at the time of payment)
- h) Main Sewer Pump Station Impact Fee (455-3718) See Separate TASP agreement to be executed later
(To be adjusted by ENR at the time of payment)
- i) Sewer Bypass Benefit Fund (HA1320-2500) N/A
- j) Storm Drain Connection Fee (340-3711) \$243,680.00
(93 single @1100 + 16771 @8.43 Ac)
- k) Park site Fee (Fee & Automation to be paid to Planning)
 - 1. Park Dedication In-Lieu Fee (320-3712) See Separate TASP agreement to be executed later
 - 2. PUD Park Fee (320-3712) N/A
- l) Hillside Water Reimbursement (HA1324-2500) N/A
- m) Street Impact Fee (100-3718) N/A
- n) Estimated Transit Area Specific Plan Fee (TBD) See Separate TASP agreement to be executed later
- o) Pedestrian bridge (-) \$ 250,000.00
(Condition of Approval 71)
- p) Estimated Permit Automation Fee (2.5% of total a to o) (505-3601) \$ 32,283.00

C. Estimated Credits and/or Reimbursements Due to Subdivider

- a) Trail Improvements (per TASP) See Separate TASP agreement to be executed later
- b) Linear Park /Open Space/Landscape Buffer (per TASP) See Separate TASP agreement to be executed later
- c) Recycled Water (per TASP) See Separate TASP agreement to be executed later
- d) McCandless East Improvements (C of A 59f) See Separate TASP agreement to be executed later
- e) Traffic Signal (C of A 59g) See Separate TASP agreement to be executed later

- f) TASP Sewer Line 11A & a portion of 11B See Separate Acquisition agreement to be executed later
Per Acquisition Agreement
- g) TASP Construction Sewer Line 11A & a portion of 11B See Separate Acquisition agreement to be executed later
- h) City Sewer Line 11A & a portion of 11B See Separate Acquisition agreement to be executed later
- i) Bridge Environmental Work Reimbursement See Separate TASP agreement to be executed later
(C of A, 60)
- j) TASP Park Fee Paid See Separate TASP agreement to be executed later

Phase 1 is 61 single-family units and 102 multi-family units
Phase 2 is 32 single-family units and 81 multi-family units

Sub-total (A & B) \$1,323,603.00

Sub-total (C) \$-0.00

Total \$1,323,603.00

- 16. Upon completion of the work and before City Initial Acceptance thereof, SUBDIVIDER shall provide the City a complete original mylar of "Record Drawing" showing all the changes from the original plan.
- 17. Upon completion of the work, and before City Council final acceptance thereof, SUBDIVIDER shall be billed for and pay or shall be refunded the difference between the amount of said costs and expenses in each instance and the amount of said remittance.
- 18. Any easement or right-of-way necessary for the completion of any of the improvements required of SUBDIVIDER shall be acquired by SUBDIVIDER at its sole cost and expense. In the event that eminent domain proceedings are necessary for the acquisition of any easement or right-of-way, SUBDIVIDER agrees that it will pay all engineering fees and costs, legal fees and costs, and other incidental costs sustained by CITY in connection with said eminent domain proceedings and any condemnation award and damages (including all costs awarded in said eminent domain proceedings). SUBDIVIDER further agrees that prior to the institution of any eminent domain proceedings and upon ten (10) days written notice from CITY, SUBDIVIDER will deposit such sums as are determined by City Council to be necessary to defray said fees, costs, awards, and damages.
- 19. CITY will accept on behalf of the public, the dedication of the streets, and easements offered for dedication, and will supply water for sale to and within said subdivision, provided however, that as a condition precedent to said initial acceptance and to supplying water, SUBDIVIDER shall perform the covenants, terms and conditions of this Agreement.
- 20. SUBDIVIDER hereby irrevocably offers to convey title of the water mains and lines, and appurtenances constructed in or for said subdivision to CITY. Upon final acceptance of said improvements by CITY, said title will be deemed to be accepted by CITY in the event that title has not previously passed to CITY by operation by law.
- 21. SUBDIVIDER agrees to comply with all requirements set forth on Exhibit "A" (attached hereto, hereby referred to and made a part hereof).

22. SUBDIVIDER agree to enter into a Covenant and Permit for Encroachment Upon Public Right Away ("Covenant and Permit") with the CITY for the construction and future maintenance of the hardscape and landscaping on the strip of the land at the northeast corner of Los Coches Street and Sinclair Frontage Road as shown in Exhibit A of that Covenant and Permit.
22. This Agreement shall be deemed to include any final conditions imposed by CITY upon the approval of the tentative and final maps related to public improvements of said subdivision.
23. SUBDIVIDER agrees that, upon ten (10) days written notice from CITY, it will immediately remedy, restore, repair or replace, at its sole expense and to the satisfaction of City Engineer, all defects, damages or imperfections due to or arising from faulty materials or workmanship appearing within a period of one-year after the date of initial acceptance of all said improvements. If SUBDIVIDER shall fail to remedy, restore, repair, or replace said defects, damages or imperfections as herein required, CITY may at its option, do so and recover the full cost and expense thereof from SUBDIVIDER.
24. This Agreement shall bind the heirs, administrators, executors, successors, assigns and transferees of SUBDIVIDER. It is agreed and understood that the covenants in this Agreement shall run with the land and are for the benefit of the other lands in the CITY OF MILPITAS, and are made by SUBDIVIDER expressly, its heirs, administrators, executors, successors, assigns and transferees and to the CITY, its successors and assigns.
25. Nothing contained in this Agreement shall be construed to be a waiver, release or extension of any provision heretofore required by ordinance, resolution or order of the City Council of the CITY.
26. Time shall be of the essence of this Agreement. All covenants herein contained shall be deemed to be conditions. The singular shall include the plural; the masculine gender shall include the feminine and neuter gender. All comments presented by SUBDIVIDER hereunder shall be subject to approval of the City Attorney as to form.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the day and year first above written.

*Signed and Sealed this _____ day of _____, 20__.

CITY OF MILPITAS

SUBDIVIDER:

By: _____
Thomas C. Williams, City Manager

D.R. Horton BAY, Inc., a Delaware corporation

**By: _____

Name: _____

Title: _____

APPROVED AS TO FORM THIS

_____ day of _____, 20__

By: _____
Michael J. Ogaz, City Attorney

APPROVED AS TO SUFFICIENCY THIS

_____ day of _____, 20__

By: _____
Kathleen Phalen, City Engineer

* Date should be same as date on Page 1.

** It is essential that the signatures be acknowledged before a California Notary Public and attach proper acknowledgment.

EXHIBIT “A”

1. The Subdivider agrees to complete necessary Water Service Agreements, and pay the connection fees prior to Building Permit issuance.
2. The Subdivider agrees to complete the construction of all public improvements and settings of all Survey Monuments before the City issuance of the Occupancy Permit/Final Inspection of the last residential building.
3. The Subdivider agrees to execute a petition to annex and establish, with respect to the property, the Special taxes levied by a Community Facility District (CFD) for the purpose of maintaining the public services, upon execution of this Agreement.
4. The Subdivider agrees to enter into an encroachment permit agreement with the City for any private facilities on City right of way (such as landscaping and related irrigation on project frontage).
5. The subdivider agrees to pay the City 2.5% Permit Automation Fee for the applicable fees.
6. The Subdivider agrees to comply with the approved conditions of approval for this Subdivision.
7. The Subdivider shall design and construct the necessary improvements per the Acquisition Agreement between the City and Subdivider. The Subdivider shall act as the lead constructing party for these improvements and is eligible for reimbursement and TASP Fee Credits from the City and/or other developments connecting to the sewer line as part of the TASP impact fees. (Resolution 8138, Conditions of Approval (COA) item #59e)
8. The Subdivider shall design and construct McCandless Drive as shown on the Tentative Map. Said improvements shall include the east side, median, asphalt concrete overlay and striping. The reimbursement costs for half of the construction of median, overlay and striping will be a credit of the TASP impact fee. (Resolution 8138, Conditions of Approval (COA) item #59f)
9. The Subdivider shall design and construct all or portions of the traffic signal at the main entry off of McCandless Drive. The City will credit fee the design and any construction costs of the signal. The need for the signal is not generated from the project but from the future park/school development across McCandless (Resolution 8138, Conditions of Approval (COA) item #59g)

Principal: D.R. Horton BAY, Inc
Project Name: Harmony

Project No. PJ 2709
Bond No. _____

**CITY OF MILPITAS
FAITHFUL PERFORMANCE BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit: _____

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the City of Milpitas, California, in the penal sum of _____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, its heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 20____.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 20____.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 20____.)

THIS JURAT MUST BE COMPLETED
) BY A NOTARY IF THE VERIFICATION
) IS EXECUTED OUTSIDE OF CALIFORNIA
)
)
)

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

Principal: D.R. Horton BAY, Inc
Project Name: Harmony

Project No. PJ 2709
Bond No. _____

**CITY OF MILPITAS
LABOR AND MATERIALS BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to perform the following work, to wit:

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, said Principal and the undersigned as corporate surety, their heirs, successors, executors and administrators, are held firmly bound, jointly and severally, unto the City of Milpitas California, and all contractors, subcontractors, laborers, materialmen, and other persons employed in the performance of the aforesaid agreement in the sum of _____ Dollars (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that said surety will pay the same in an amount not exceeding the amount hereinabove set forth, and also in case suit is brought upon this bond, will pay, in addition to the fact amount thereof, costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies and corporations entitled to file claims under Title 15 (commencing with Section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void, otherwise it shall be and remain in full force and effect.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of said agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any manner affect its obligations on this bond, and it does hereby waive notice of any such change, extension, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 20____.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
Dean K. Mills, Assistant Vice President

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 20__.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 20__.

THIS JURAT MUST BE COMPLETED
) BY A NOTARY IF THE VERIFICATION
) IS EXECUTED OUTSIDE OF CALIFORNIA
)
)
)

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

Principal: D.R. Horton BAY, Inc
Project Name: Harmony

Project No. PJ 2709
Bond No. _____

**CITY OF MILPITAS
SURVEY MONUMENTATION BOND**

WHEREAS, the Principal has entered into a contract with the City of Milpitas to install and complete certain designated public improvements, including setting of survey monuments by an engineer or surveyor prior to a certain date.

WHEREAS, said contract (and any City approved plans and specifications in connection therewith) is hereby referred to and made a part hereof, with like force and effect as it herein at length set forth:

NOW, THEREFORE, we the Principal and _____, as surety, are held and firmly bound unto the City of Milpitas, California, and that Engineer or Surveyor, who set said survey monuments in the penal sum of _____ (an accepted amount by City for this work, based on engineers estimate, 10K minimum) _____ Dollars (\$ _____), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, successors, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the above bonded principal, its heirs, executors, administrators, successors or assigns, shall well and truly keep and perform the covenants, conditions, and provisions in said agreement and any alteration thereof on his or their part, to be kept and performed, at the time and in the manner therein specified, and shall indemnify and save harmless the City of Milpitas, its officers, agents and employees as therein stipulated, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by City in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The surety hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition.

IN WITNESS WHEREOF, this instrument has been duly executed by the principal and surety above named on _____, 20__.

NOTE: BE SURE BOND DATE DOES NOT PRE-DATE CONTRACT.

SUBDIVIDER: _____

SURETY: _____

BY: _____
(write name)

BY: _____
(write name)

BY: _____
(type name and office)

BY: _____
(type name and office)

Address of Surety: _____

VERIFICATION

I declare under the penalty of perjury that I have authority to execute this bond on behalf of the above-named surety.

Executed at _____, California, on the _____ day of _____, 20__.

(Name)

(Type Name)

Address: _____

Subscribed and sworn to before me, a)
Notary Public, this _____ day of)
_____, 20__.

THIS JURAT MUST BE COMPLETED
BY A NOTARY IF THE VERIFICATION
IS EXECUTED OUTSIDE OF CALIFORNIA

(Sign)

(Type)

ACKNOWLEDGMENT

NOTE: A Notary acknowledgment must be completed for signatures of both principal and surety. Use correct form.
A power of attorney is not enough.

Form Approved:

CITY OF MILPITAS

**CERTIFICATE RELATING TO WORKER'S COMPENSATION
INSURANCE PURSUANT TO LABOR CODE SECTION 3800**

(Subdivision)

I, THE UNDERSIGNED, HEREBY CERTIFY that at all times during the performance of any work of improvement under agreement with the City of Milpitas. (Check one of the following):

_____ Any general contractor engaged by me for said work will have in full force and effect, Worker's Compensation Insurance pursuant to the attached certificate of Worker's Compensation Insurance issued by an admitted insurer. Said Certificate shall state that there is in existence a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner. The certificate shall show the expiration date of the policy, that the full deposit premium on the policy has been paid and that the insurer will give City at least ten days advance notice of the cancellation of the policy (an exact copy or duplicate of the Certificate of Worker's Compensation Insurance certified by the Director of Industrial Relations or the insurer may be attached).

_____ Or has in full force and effect and have attached hereto a Certificate of Consent to Self-insure issued by the Director of Industrial Relations or the insurer may be attached).

I declare under penalty of perjury that the foregoing is true and correct and executed on _____
at _____.
(Date) (City)

By: _____

Official Title

On behalf of: _____
Contractor

NOTE: YOUR CERTIFICATE OF WORKER'S COMPENSATION INSURANCE MUST BE ATTACHED AND
MUST MEET THE REQUIREMENTS SET FORTH ABOVE.

PLEASE NOTE THAT IF YOU HAVE ANYONE WORKING FOR OR WITH YOU, YOU MAY BE REQUIRED TO HAVE WORKER'S COMPENSATION INSURANCE. FOR FURTHER INFORMATION, CONTACT THE OFFICE OF THE DIRECTOR OF INDUSTRIAL RELATIONS.

Principal: D.R. Horton BAY, Inc
Project Name: Harmony

Project No. PJ 2709

CITY OF MILPITAS
CERTIFICATE OF WORKER'S COMPENSATION INSURANCE

Pursuant to California Labor Code Section 3800, the undersigned Insurer certifies that it is an admitted Worker's Compensation Insurer, that it has issued a valid policy of Worker's Compensation Insurance in a form approved by the California Insurance Commissioner (bearing policy number _____) to _____ in connection with the above project and subdivider. Said policy is now in full force and effect and the full deposit premium has been paid. At least 10 days advance notice of the cancellation of said policy will be given to the City of Milpitas. The expiration date on said policy is _____.

Dated: _____

INSURANCE COMPANY

AUTHORIZED REPRESENTATIVE (Signature)

Address: _____

AUTHORIZED REPRESENTATIVE (Type Name)

Address: _____

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer.
Executed at _____, California, on the _____ day of _____, 20__.

Authorized Signatory (Sign)

(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public, this _____ day of _____, 20__.

(Sign)

(Type Name)

Principal: D.R. Horton BAY, Inc
Project Name: Harmony

Project No. PJ 2709

CERTIFICATE OF GENERAL LIABILITY AND AUTOMOBILE LIABILITY INSURANCE

The undersigned insurance company certifies to the City of Milpitas, California, that it has issued a general public liability insurance policy, policy number _____ to _____ in connection with a work of improvement generally described as Street and underground improvement on plans 2-1162, etc. _____. The policy names the City of Milpitas, its officers and employees (as additional insured) and insures said City, officers and employees against liability arising out of activities, including but not limited to, coverage for all work performed by or on behalf of permittee, products and completed operations of the permittee; the premises owned, occupied or used by the permittee; or automobiles owned, leased, hired or borrowed by the permittee in the following minimum amounts and for the following periods:

<u>COVERAGE</u>	<u>POLICY NUMBER</u>	<u>POLICY PERIOD</u>	<u>MINIMUM LIMITS OF LIABILITY</u>
(1) Bodily Injury			\$1,000,000 each person) \$1,000,000 each occurrence))*
(2) Property Damage			\$1,000,000 each occurrence) \$1,000,000 aggregate)

This policy provides: (1) primary coverage for additional insured parties; if said additional insured have other insurance against loss covered by this policy, the other insurance shall be excess insurance only; (2) that said additional insured parties are not precluded from claim under this policy against other insured parties; and (3) each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City Clerk.

_____ Insurance Company	Address of Signatory: _____
_____ Authorized Signature (Sign)	_____
_____ Authorized Signature (Type)	_____

* If project involves less than \$50,000, City will accept \$300,000/\$50,000

VERIFICATION

I declare under the penalty of perjury that I am authorized to sign this Certificate on behalf of the above-named insurer. Executed at _____, California, on the _____ day of _____, 20__.

Authorized Signatory (Sign)

(Type Name)

SUBSCRIBED AND SWORN TO BEFORE ME, a
Notary Public, this _____ day of _____, 20__.

(Sign)

(Type Name)

** If this certificate is executed outside of California, it must be sworn to before a Notary Public.

FORM APPROVED: _____, 20__, by _____

Control No. 2012-024

Recording Requested by
and when Recorded, return to:

CITY OF MILPITAS
455 E. CALAVERAS BOULEVARD
MILPITAS, CA 95035-5479
Attn: City Clerk

EXEMPT FROM RECORDING FEES PER GOVERNMENT CODE
§§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Document Transfer Tax is \$ 0

() Computed on full value of property conveyed

() Computed on full value less value of liens and encumbrances remaining

City transfer tax is \$ 0

APN: 086-41-20, 21 and 22

STORMWATER MANAGEMENT FACILITIES OPERATION AND MAINTENANCE AGREEMENT

This Stormwater Management Facilities Operation and Maintenance Agreement ("AGREEMENT") is made and entered into this ____ day of _____, 2012, by and between D.R. Horton BAY, Inc., a Delaware corporation c (hereinafter referred to as "Property Owner"), and the City of Milpitas, a municipal corporation of the State of California ("City").

RECITALS:

This AGREEMENT is made and entered into with reference to the following facts:

WHEREAS, the Permanent Stormwater Pollution Prevention Measures installed (hereinafter referred to as "BMPs" (Best Management Practices)) must be maintained for the development called, HARMONY, located at 1615 McCandless Street, MILPITAS, Santa Clara County, State of California and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "property"); and

WHEREAS, the Property Owner is the owner of the property; and

WHEREAS, the City's Stormwater and Urban Runoff Pollution Control Ordinance requires proper operation and maintenance of the BMPs constructed on this property; and

WHEREAS, the development conditions of approval require that BMPs, as shown on the approved Stormwater Control Plan, be constructed and properly operated and maintained by the Property Owner; and

WHEREAS, the City has approved the Stormwater Control Operation and Maintenance Plan prepared by Carlson, Barbee & Gibson, Inc. on the day of _____, as such may be subsequently modified from time to time with City's approval; and

WHEREAS, the Stormwater Control Operation and Maintenance Plan includes an annual inspection checklist for the BMPs constructed on this property; and

WHEREAS, this Agreement memorializes the Property Owner's maintenance, operations, and inspection obligations under the City's Ordinance and the approved Plans (as defined below).

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

SECTION 1

Responsibility for Operation and Maintenance: The Property Owner will make available copies of the approved Stormwater Control Plan and approved Stormwater Control Operation and Maintenance Plan (hereinafter the "Plans") at the site with the facility or property manager and must maintain the BMPs in good working condition acceptable to the City for the life of the project, and in compliance with the Ordinance and the approved Plans.

SECTION 2

Inspection by Property Owner: The Property Owner, at its own expense, shall conduct annual inspections during the month of September or October of each year. The annual inspection report shall include completion of the checklist described in the approved Stormwater Operation and Maintenance Plan. The BMPs must be inspected by a qualified independent inspector who is acceptable to the City. The Property Owner must submit the Inspection Report on these BMPs to the City Engineer within 30 days after each inspection. The Annual Inspection Report submitted shall be accompanied by a nonrefundable processing fee per the City's standard fee schedule.

SECTION 3

Facility Inspection by the City: The Property Owner grants permission to the City, its authorized agents and employees, to enter the property, and to inspect the BMPs whenever the City deems necessary to enforce provisions of the City's Stormwater and Urban Runoff Pollution Control Ordinance. The City may enter the property at any reasonable time to inspect the property and BMP operation, to inspect and copy records related to storm water compliance, and to collect samples and take measurements. Whenever possible, the City will provide notice prior to entry. The Property Owner shall pay for all staff time and maintain a Private Job Account with a minimum balance of \$4,000 for inspection by City Staff.

SECTION 4

Failure to Perform Required Facility Repairs or Maintenance by the Property Owner: If the Property Owner, or its successors fail to maintain the BMPs in good working order and in accordance with the approved Plans and the City's Ordinance, the City, with prior notice, may enter the property to return the BMPs to good working order. The City is under no obligation to maintain or repair the BMPs, and this Agreement may not be construed to impose any such obligation on the City. If the City, under this section takes any action to return the BMPs to good working order, the Property Owner shall reimburse the City for all the costs incurred by the City. The City will provide the Property Owner with

an itemized invoice of the City's costs and the Property Owner will have 30 days to pay the invoice. If the Property Owner fails to pay the invoice within 30 days, the City may secure a lien against the real property of the Property Owner in the amount of such costs. This Section 4 does not prohibit the City from pursuing other legal recourse against the Property Owner.

SECTION 5

Successors and Assigns: This Agreement applies to the Property Owner and its successors and assigns. This Agreement runs with the land and imposes a continuing obligation on anyone who owns the property. Upon transfer of the property, the Property Owner shall provide the new owner with the current Plans.

SECTION 6

Indemnity: The Property Owner indemnifies and holds harmless the City and its authorized agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the City from the construction, presence, existence or maintenance of the BMPs by the Property Owner, or from any personal injury or property damage that may result from the City entering the property under Section 4 except to the extent, if any, that such injury or damage is due to the gross negligence or willful misconduct of the City or its authorized agents or employees. If a claim is asserted against the City, its authorized agents or employees, the City shall promptly notify the Property Owner and the Property Owner shall defend the claim and any resulting litigation at its own expense. If any judgment is entered against the City, or its authorized agents or employees, the Property Owner must pay all costs and expenses to satisfy the judgment.

SECTION 7

Severability: Invalidity of any one of the provisions of this Agreement shall in no way affect any other provisions, and all other provisions shall remain in full force and effect.

PROPERTY OWNER'S NAME:

D.R. Horton BAY, Inc., a Delaware corporation

BY: _____
Dean K. Mills , Assistant Vice President

Address for Notices:
6630 Owens Drive
Pleasanton, CA 94588

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

By: _____
City Engineer as to content

By: _____
City Attorney as to form

By: _____
City Manager

Placeholder for
ALL PURPOSE ACKNOWLEDGMENT
Use current format
Include for each primary signer

State of California)
) s.s.
County of _____)

On _____, before me,
_____, personally appeared

_____,
_____ personally known to me;
_____ or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s)
or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to
persons relying on the document.

_____ Individual(s)	
_____ Corporate Officer(s) Titles	_____ and _____
_____ Partner(s)	_____ Limited _____ General
_____ Attorney-in-Fact	
_____ Trustee(s)	
_____ Guardian/Conservator	
_____ Other :	_____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent
attachment of this certificate to unauthorized document.

Title or type of document _____
Number of pages: _____ Date of document: _____
Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

EXHIBIT A
Legal description

REAL PROPERTY SITUATED IN THE CITY OF MILPITAS, COUNTY OF SANTA CLARA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

Tract # 10137, filed _____, in Map Book _____, Pages _____, inclusive, Santa Clara County Records

RECORDING REQUESTED BY AND
WHEN RECORDED, MAIL TO:

City of Milpitas
455 East Calaveras Blvd
Milpitas CA 95035
Attn: Land Development Engineer

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER’S USE)

APN 086-41-020, 21 and 22

**AGREEMENT AFFECTING REAL PROPERTY RELATED TO COVENANT
AND RESTRICTION OF ON-SITE PRIVATE UTILITIES**

This Agreement Affecting Real Property Related to Covenant and Restriction of On-Site Private Utilities (“Agreement”) is entered into and effective _____ (date) by and between D.R. Horton BAY, Inc., (Developer) and the City of Milpitas (“City”).

RECITALS:

A. Pursuant to the Conditions and Notes of Approval for the subject development to have on-site private utilities, the Developer shall ensure that the Developer’s private utilities shall be operated in a manner to the City’s satisfaction for the purposes of compliance with local codes, regional and state requirements.

B. This Agreement is intended to satisfy the aforementioned requirement.

NOW, THEREFORE, in consideration of the recitals and mutual obligations expressed herein, the Parties (City and Developer) agree as follows:

STATEMENT OF AGREEMENT

1. D.R. Horton BAY, Inc., the owner of the property located at 1600 block of McCandless Drive (APN 086-41-020, 021 and 022) (the “Project”), agrees to provide on-site private utilities consistent with the requirements of the City, region and state.
2. The Developer has obtained the approval of the City Council on November 15, 2011, (Resolution #8138) for the Project. The recordation of this Agreement is required for the release of the final map recordation for this development and/or permit issuance for the construction of the Project.

3. The Developer agrees to covenant its property for the terms as stated below. Recordation of this Agreement for covenant and restriction shall be binding.
4. The provisions and conditions of this Agreement shall run with the land for the Project and be enforceable against successors in interest and assigns of the Developer. The requirements of this Agreement shall run with the land and pass with each and every portion of the Project and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the developed lots in the Project.
5. The on-site private utilities are not public dedications. It is the Developer's intention that the private utilities are not intended to be dedicated to the public, nor any portion of the private utilities to be operated by the City.
6. This Agreement shall be valid in perpetuity and can only be terminated if replacement utilities system has/have been approved by the City Engineer and written notice of termination of this Agreement has been provided by the City.
7. This Agreement shall be kept in the files of the Milpitas City Engineer and shall be recorded on the titles of the lots in the Project.
8. Although the Developer is obligated to provide the private utilities as provided under this Agreement, in no circumstance shall the City be obligated by this Agreement to remedy such breach. The Parties acknowledge that the City may invoke any remedy provided for in the Milpitas Municipal Code to enforce any code violation against the Developer outside of this Agreement. The Developer acknowledges that the City is a signatory to this Agreement for the sole purpose of ensuring that the private utilities stated in the Milpitas Development Guidelines are complied with.
9. The Parties understand and agree that if for any reason the private utilities installed do/does not meet the requirements as shown on the City of Milpitas Development Guidelines, the Developer shall be in violation. By signing this Agreement, the Developer agrees to waive any right to contest enforcement of the City's Milpitas Development Guidelines should this circumstance arise.
10. Title to and the right to use the private utilities and appurtenances upon which such facilities are located will be subservient to the title of the habitable lots in the Project which the private system(s) serves.
11. The Project or portion thereof on which the private utilities and appurtenances are located will not be made subject to any other covenant or contract for use which interferes with the uses of the private utilities provide for herein, without prior written consent of the City; provided, however, that the declaration of covenants, conditions and restrictions that will be recorded against the Project (on a phased basis) may include covenants that are consistent with this Agreement and impose obligations on the homeowners association formed to manage the Project in satisfaction of this Agreement.

12. This Agreement shall be governed under the laws of California.
13. Neither this Agreement nor any acts of a party hereto shall be deemed or construed by the parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between or among the parties to this Agreement.
14. The Developer shall defend, hold harmless and indemnify City and its officials, employees, agents, and representatives, from and against any and all claims, suits, demands, liability, loss, costs, damages, and other expenses (including reasonable attorneys' fees and court costs at trial and on appeal) in connection with the loss of life, personal injury and/or damage to property, if arising from or out of any occurrence in or upon the properties mentioned herein and related to the private utilities required herein. Notwithstanding the foregoing, nothing herein shall require Developer to defend, hold harmless and indemnify the City for its gross negligence or willful misconduct.
15. The Developer warrants that it has had full notice and opportunity to examine the drawings, plans and design of the private utilities designed by consultants hired by the Developer before accepting responsibility.
16. The Declarations of Covenants, Conditions, and Restrictions for the Project shall make a reference to this Agreement and shall obligate the homeowners association to comply with the requirements of this Agreement when the ownership of the property that contains the private utility system is transferred to said homeowners association.
17. The private utilities for this development include these systems: sanitary sewer, storm drain, street, street lighting, water, sanitary sewer lift station, etc.) They are shown in more detail on the approved plans, B-GR12-0004 and 0005, B-UT12- 0005, B-SI12-0007 and 2-1162.
18. Work on the private utilities shall be performed by personnel with the appropriate contractor's license.
19. Underground work shall comply with Cal OSHA as it relates to safety of confined space, trenching/shoring and other matters.
20. The private water system is subject to these additional terms:
 - A. The Developer shall ensure that a state licensed contractor (C34 or C36) shall perform all necessary work (installation, repair, maintenance and operation) on the private water system in accordance with the appropriate American Water Works Association Standards (such as C600 (ductile iron pipe installation)), C605 (polyvinyl chloride pipe installation), C651 (disinfection) and M44 (valves)) similar to a state water operator.

- B. The Developer shall not resell the water to its developed lots, only allocate costs accordingly.
 - C. The Developer acknowledges that the proposed private on-site water system has master meter(s) that the City reads and bills. This proposal does not allow for any assessment of water usage based on uses (domestic, fire and irrigation). Therefore, the Developer accepts and shall pay based on the billing under this condition. There is no adjustment to the bills and you waive any right to contest the bill(s) based on usage type.
 - D. The Developer also acknowledges that any downstream meters (sub-meters) of the City master meter(s) are not recognized by the City and therefore, no billing by the City shall occur. In addition, the total of sub-meters may not add to the same quantity as the City's master meter(s). There is no adjustment to the bills and you waive any right to contest the bill(s) based on meters' quantities not adding up.
 - E. The property or portion thereof on which the water system and appurtenances are located will not be made subject to any other covenant or contract for use which interferes with the water system uses provided for herein, without prior written consent of the City.
- 21 The Developer is aware of the sewer backflow devices installed and shall inform all affected parties of the locations. Removal of the sewer flap gate prior to running a cleaning head is critical to not damaging the device. (Sheet 12, etc. of the plans).
- 22 The installation of utility lines in close proximity to the building is acknowledged by the Developer and this information (record drawings) shall be forwarded to the homeowners association.
- 23 The storm drain system with the drainage areas are acknowledged by the Developer and this information (record drawings) shall be forwarded to the homeowners association.
- 24 The terms for the use of the city right of way and easement shall be complied as stated in the Covenant and Permit for Encroachment Upon Public Right of Way Agreement.

IN WITNESS WHEREOF, this Agreement is executed and made effective as of the date first above set forth.

Dated:_____

D.R. Horton BAY, Inc., a Delaware corporation

By: _____ By: _____

Notary Acknowledgement of Developer is required.

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

Dated: _____

Approved as to form:

Michael J. Ogaz, City Attorney

Approved by:

Kathleen Phalen, City Engineer

Placeholder for
ALL PURPOSE ACKNOWLEDGMENT
Use current format
Include for each primary signer

State of California)
) s.s.
County of _____)

On _____, before me,
_____, personally appeared

_____,
_____ personally known to me;
_____ or proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal. (SEAL)

Signature of Notary Public

CAPACITY CLAIMED BY SIGNER:

Though statute does not require the notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

_____ Individual(s)
_____ Corporate Officer(s) Titles _____ and _____
_____ Partner(s) _____ Limited _____ General
_____ Attorney-in-Fact
_____ Trustee(s)
_____ Guardian/Conservator
_____ Other : _____

Signer is representing: _____

ATTENTION NOTARY: Although the information requested below is optional, it could prevent fraudulent attachment of this certificate to unauthorized document.

Title or type of document _____
Number of pages: _____ Date of document: _____

Signer(s) other than named above: _____

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED ABOVE

Control No. 2012-026

Recording requested by
And When recorded mail to:

City of Milpitas
455 East Calaveras Blvd
Milpitas CA 95035
Attn: Land Development Engineer

Record without fee under
Section 6103 Government Code
State of California

**Covenant and Permit for Encroachment
Upon
Public Right of Way**

This authorization ("Permit") is entered into between the City of Milpitas, a municipal corporation ("City") and D.R. Horton BAY, Inc., ("Permittee").

RECITALS

- A. Permittee has requested permission from the City to enter upon, utilize, construct improvements within and adjacent to certain portions of the City's right of way and easement along the frontage of McCandless Drive and public service utility easement from McCandless Drive to Santa Clara Valley Water District's Penitencia Creek as shown on parcel map recorded on book of maps 536, page 42, also shown as proposed parcels O, P, Q and R and existing easement of Tract # 10137, ("Encroachment Area"), as shown on Exhibit "A".
- B. Permittee's utilization of the Encroachment Area will be undertaken for the benefit of the Permittee's property (the "Benefitted Property") as shown on Exhibit "A" as Tract #10137, lots 1 to 76.
- C. Permittee desires to enter upon the Encroachment Area in order to construct, install, maintain and replace certain surface improvements ("the Improvements"), described with greater particularity and as shown in Exhibit "A" and improvement plans 2-1162. Those Improvements are the project's site amenities including landscaping & related irrigation, concrete flatwork and project entry signs to be located at the City's right of way for the Permittee.
- D. Replacement, operation and maintenance responsibilities of the sewer system (within the subdivision down to sanitary sewer manhole 38 on sheet 11, etc. of plans 2-1162, sheet 14 of utility plans)) belongs to the Permittee.

- E. Replacement, operation and maintenance responsibilities of storm drain system (up to storm drain manhole # 78 within Lee Way in the subdivision) belongs to the Permittee. The existing 33" RCP to be replaced by 36" HDPE and casing belongs to the City.
- F. Replacement, operation and maintenance responsibilities of the water system (within the subdivision to master meter(s)) belongs to the Permittee.
- G. Exhibits A is hereby incorporated herein by this reference as though fully set forth at length.
- H. The purpose of this Permit is to document the City's authorization of the Permittee's encroachment onto the City's right of way, describe the terms and conditions governing such encroachment, and to set forth the Permittee's covenants to perform certain obligations and to be subject to certain restrictions, as set forth in this Permit.

The parties therefore agree as follows:

PERMIT PROVISIONS

1. City's Title. By acceptance of the benefits hereunder, Permittee acknowledges the City's title to and interest in the real property of which the Encroachment Area is a part and waives any right to contest the validity of such title or interest.
2. Covenant Running With the Land. The obligations set forth herein shall constitute covenants that shall run with the land and be binding upon and inure to the benefit of the future owners, encumbrances, successors, heirs, personal representatives, transferees, and assigns of owners of the Benefitted Property.
3. No Easement Granted. By accepting the benefits herein, Permittee acknowledges that whatever rights and obligations are possessed by the City with respect to the public right of way within which the Encroachment Area is located shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to encroach.
4. Term. The term of this Permit is indefinite and may be revoked by the City or abandoned by Permittee at any time.
5. No Right to Exclude. The Encroachment Area is an area in a public right of way and shall be accessible by members of the public for the entire term of this Permit.
6. Existing Utilities. Installation of the Improvements shall not interfere with existing utilities within the Encroachment Area. If such interference is unavoidable, Permittee shall be solely responsible for obtaining permission from the providers of such utilities, coordinating its construction activities with such utility providers and satisfaction of any expenses resulting from such interference.

7. Maintenance, Removal or Relocation of Improvements. Permittee acknowledges that the Encroachment Area is or may be the site of future public improvements and utilities. All rights of use as described herein may be terminated, interrupted or modified upon 90 days prior notice by the City to the Permittee. Such notice shall provide a description of the intended City activities in the Encroachment Area. Upon such notice, Permittee shall, within the time prescribed by the City, remove or relocate all improvements placed, constructed or maintained by Permittee within the affected portions of the Encroachment Area. All Improvements or obstructions that are not removed by the Permittee after notice shall constitute a nuisance and may be abated pursuant to all remedies available under California law, including but not limited to the remedies set forth in this Permit. If Permittee fails to comply with such modification notice within the time prescribed, the City may remove and destroy the Improvements without reimbursement to Permittee, its successors and assigns, and the cost of such removal shall be paid by Permittee, its successors and assigns, to the City and shall constitute a debt owing to the City. So long as the Permit remains in effect, Permittee shall be solely responsible for maintenance of the Improvements.

- a. Notwithstanding the foregoing, the City and its assigns, agents, employees and contractors shall have the right to immediately enter the Encroachment Area and remove, relocate, alter, or otherwise demolish the Improvements without notice to the Permittee in the event of any emergency or immediate threat to human health, safety, or property, as determined by the City. In such situations, the City shall have no obligation to reimburse or replace affected Improvements. By accepting this Permit, the Permittee releases and waives any and all liability, claims or demands the Permittee may have against the City and its assigns, agents, employees and contractors for entry and work within the Encroachment Area.
- b. Notwithstanding the foregoing, the City acknowledges that the Improvements shown in Exhibit A are infrastructure needed for the Benefitted Property.

8. Access Rights. The City grants Permittee the non-exclusive right to enter upon the Encroachment Area in order to construct, install, maintain, replace, repair and use the Improvements.

9. Construction Standards. Construction of the Improvements shall conform in all respects to the standards and requirements of the City and shall be subject to the City's normal inspection and approval procedures.

10. Indemnity/Hold Harmless. Permittee hereby agrees to defend, indemnify and hold harmless the City, its elected and appointed boards, officers, agents and employees, from any and all liability, claims or damages for personal injury or death as well as for property damage, which may arise as a result of the construction, maintenance, use, repair or presence of the Improvements installed hereunder and/or the Permittee's use, presence or access rights to the Encroachment Area, whether due to acts or omissions of Permittee or any

11. Termination/Revocation. This Permit is revocable and subject to termination by the City at any time upon determination by the City Engineer that Permittee, its successors or assigns, is in violation of the Permit conditions and obligations set forth herein. By acceptance hereof, Permittee waives any claim, loss, damage action against the City resulting from the termination or revocation of this Permit or removal of the Improvements by the City as permitted herein.

12. Attorney's Fees. In the event of legal action between the parties with respect to this authorization, the party prevailing in such action will be entitled, in addition to such other relief as may be granted, to its reasonable attorney's fees and costs.

13. Compliance with other Conditions. Permittee acknowledges that the authorization contained herein is in addition to and not in lieu of any other permits, inspections or approvals which Permittee may need to obtain from the City, from other utility providers or property owners with respect to its construction of the Improvements and that Permittee must comply with all additional conditions imposed by the City with respect to construction of the Improvements.

14. Encroachment Authorization. Based upon the terms and provisions in this Agreement, the City hereby authorizes encroachment by Permittee upon the Encroachment Area.

15. Successors and Assigns of Benefitted Property. This Permit will bind and inure to the benefit of the parties, their respective heirs, successors and assigns. This authorization is intended to run with the Benefitted Property as a covenant running with the land and the obligations of Permittee described herein will constitute continuing obligations of all persons or entities succeeding to Permittee's ownership interest in the Benefitted Property. The obligations of any record owner of the Benefitted Property under this Permit shall terminate upon conveyance of title to the Benefitted Property. All successors to the ownership interest(s) to the Benefitted Property shall constitute the "Permittee" for purposes of this Permit.

16. Notices. All notices or other communications required or provided to be given by either party shall be in writing and shall be hand delivered, delivered by courier, or sent via facsimile transmission or by United States first class (or registered or certified) mail, postage prepaid, and shall be effective when hand delivered or delivered by courier or facsimile transmission, or when deposited in the mail as provided above and addressed, to the parties. All notices to the City

City Engineer
Milpitas City Hall
455 East Calaveras Boulevard
Milpitas, CA 95035

All notices to the Permittee shall be sent to the listed name and address of the record owner(s) of the Benefitted Property listed in the records of the County recorder of the County of Santa Clara. The provision of notice pursuant to the procedures in this section to the listed record owner(s) of the Benefitted Property shall constitute City compliance with the notice requirements of the City set forth in this Permit.

17. Lien Powers. Permittee agrees and acknowledges that any costs incurred by the City to remedy any violations of this Permit and the covenanted obligations set forth herein shall constitute a lien on the Benefitted Property. Upon 30-day notice, and an opportunity to respond, the City may add to the tax bill of the Benefitted Property any past-due financial obligation owing to the City by way of the covenants set forth in this Permit.

18. Insurance. The Permittee shall maintain a policy of liability insurance in an amount satisfactory to the City in order to protect the City from any potential claims which may arise from the encroachment.

19. Recording. This Permit must first be signed by the Permittee, notarized, executed by the City and recorded by the Permittee with the County Recorder of the County of Santa Clara on the Benefitted Property after final map recordation and prior to issuance of building permits for the residential production structures of the Permittee. The recording fee shall be paid by Permittee.

Executed on this _____ day of _____, 2012, at Milpitas, California.

PERMITTEE:

D.R. Horton BAY, Inc., a Delaware corporation

BY: _____ BY: _____

6630 Owens Drive,
Pleasanton, CA 94588

CITY OF MILPITAS, A MUNICIPAL CORPORATION:

Date: _____ By _____
Thomas C. Williams, City Manager

Attest:

Mary Lavelle, City Clerk

Approved as to form:

Michael J. Ogaz, City Attorney

Recommended by:

Kathleen Phalen, City Engineer

Exhibit “A”

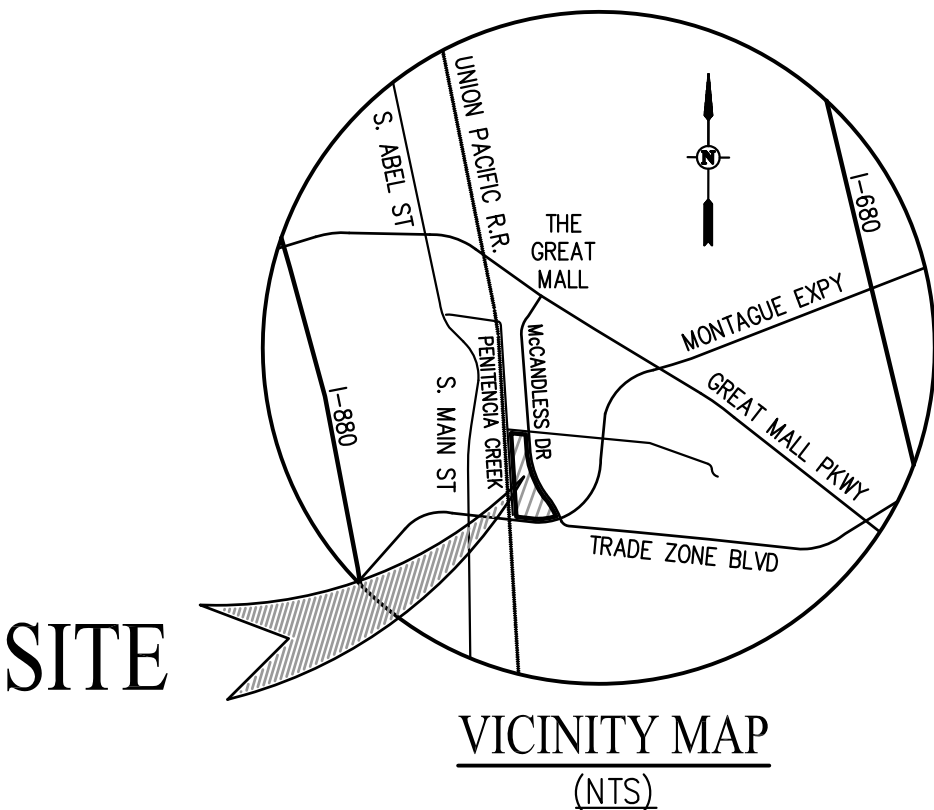
The encroachment is for the installation of the project's facilities, including signage, wall, planting, irrigation, concrete flatwork within the City's right of way/easement for the benefit of the adjacent tract.

The encroachment areas are on the City's right of way on the subject final map and improvement plans.

It is anticipated that the storm facility located in the existing easement from McCandless Drive to Penitencia Creek may require future replacement, operational, and maintenance activities for perpetuity. The development is subject to these terms:

- a) No trees shall be placed in the city's existing easement (10' PSUE) traversing from McCandless Drive to Penitencia Creek.
- b) Shrubs, groundcover, irrigation system and hardscape features (Portland cement concrete, etc.) are allowed within the easement and clear zone subject to any restoration (including repair, maintenance or replacement) is to be performed by the owner, not the City. Any future surface restoration required by storm drain work beyond simple asphalt concrete belongs to the property owner of the site (not the City).

TRACT 10137
HARMONY
FOR CONDOMINIUM PURPOSES
BEING A SUBDIVISION OF PARCEL 11 OF THE PARCEL MAP FILED IN BOOK 536 OF
MAPS AT PAGE 41, AND PARCEL A OF THE CERTIFICATE OF COMPLIANCE FOR LOT
LINE ADJUSTMENT NO. LLA 2011-11, FILED IN DOCUMENT NO. 2012-21536585 OF
OFFICIAL RECORD OF SANTA CLARA COUNTY
CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA
CARLSON, BARBEE & GIBSON, INC.
ENGINEERS SURVEYORS PLANNERS
SAN RAMON CALIFORNIA
OCTOBER 2012



OWNER'S STATEMENT

WE HEREBY STATE THAT WE ARE THE OWNERS OF OR HAVE SOME RIGHT, TITLE, OR INTEREST IN AND TO THE REAL PROPERTY INCLUDED WITHIN THE SUBDIVISION SHOWN HEREON; THAT WE ARE THE ONLY PERSONS WHOSE CONSENT IS NECESSARY TO PASS A CLEAR TITLE TO SAID REAL PROPERTY; THAT WE CONSENT TO THE MAKING AND RECORDING OF THIS SUBDIVISION MAP AS SHOWN WITHIN THE DISTINCTIVE BOUNDARY LINE.

WE HEREBY OFFER FOR DEDICATION TO THE CITY OF MILPITAS AN EASEMENT FOR PUBLIC USE FOR OPERATION, ALTERATION, RELOCATION, MAINTENANCE, REPAIR AND REPLACEMENT OF ALL PUBLIC SERVICE FACILITIES AND THEIR APPURTENANCES, OVER, UNDER, ALONG AND ACROSS THE FOLLOWING:

1. EASEMENTS "A" FOR PUBLIC SERVICE AND UTILITY EASEMENT PURPOSES (PSUE).
2. EASEMENTS "B" FOR EMERGENCY VEHICLE ACCESS PURPOSES (EAE).

THE ABOVE MENTIONED EASEMENTS (PSUE & EAE) SHALL REMAIN OPEN AND FREE FROM BUILDINGS AND STRUCTURES OF ANY KIND EXCEPT PUBLIC SERVICE AND PUBLIC UTILITY STRUCTURES AND THEIR APPURTENANCES, IRRIGATION SYSTEMS AND THEIR APPURTENANCES AND LAWFUL FENCES. UNOBSTRUCTED CONTINUOUS ACCESS SHALL BE MAINTAINED AT ALL TIMES.

THE UNDERSIGNED HEREBY DECLARES THAT ALL OF THE PRIVATE STREETS (PARCEL A) ARE ESTABLISHED AS ACCESS WAYS FOR THE BENEFIT OF ALL THE LOT OWNERS WITHIN THIS SUBDIVISION, THEIR LICENSES, VISITORS AND TENANTS, BUT ARE NOT OFFERED FOR DEDICATION FOR PUBLIC USE. MAINTENANCE OF SAID PRIVATE STREETS IS TO BE THE RESPONSIBILITY OF THE HOMEOWNER'S ASSOCIATION OF TRACT 10137, ALL IN ACCORDANCE WITH THE SUBDIVISION RESTRICTIONS GOVERNING THIS PROJECT. THE DESIGNATED PRIVATE STREETS ON THIS MAP ARE NOT PART OF THE CITY OF MILPITAS STREET SYSTEM AND ARE NOT ACCEPTED FOR PUBLIC MAINTENANCE.

OWNER:

D.R. HORTON BAY, INC., A DELAWARE CORPORATION

BY: _____

NAME: _____

TITLE: _____

ACKNOWLEDGMENT CERTIFICATE (OWNER'S)

STATE OF _____)
COUNTY OF _____)

ON _____, 2012, BEFORE ME, _____, A NOTARY PUBLIC, PERSONALLY APPEARED _____, WHO PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHOSE NAME(S) IS/ARE SUBSCRIBED TO THE WITHIN INSTRUMENT, AND ACKNOWLEDGED TO ME THAT HE/SHE/THEY EXECUTED THE SAME IN HIS/HER/THEIR AUTHORIZED CAPACITY(IES), AND BY HIS/HER/THEIR SIGNATURE(S) ON THE INSTRUMENT THE PERSON(S), OR THE ENTITY UPON BEHALF OF WHICH THE PERSON(S) ACTED, EXECUTED THE INSTRUMENT.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING PARAGRAPH IS TRUE AND CORRECT.

WITNESS MY HAND:

SIGNATURE: _____

NAME (PRINT): _____

PRINCIPAL COUNTY OF BUSINESS: _____

MY COMMISSION NUMBER: _____

MY COMMISSION EXPIRES: _____

SURVEYOR'S STATEMENT

I CHRISTOPHER S. HARMISON, HEREBY CERTIFY THAT I AM A LICENSED LAND SURVEYOR IN THE STATE OF CALIFORNIA, THAT THIS MAP WAS PREPARED BY ME OR UNDER MY DIRECTION IN APRIL 2012 AND IS BASED UPON A FIELD SURVEY IN CONFORMANCE WITH THE REQUIREMENTS OF THE SUBDIVISION MAP ACT AND LOCAL ORDINANCE AT THE REQUEST OF D.R. HORTON BAY, INC., A DELAWARE CORPORATION IN JANUARY 2012 AND IS TRUE AND COMPLETE AS SHOWN. I HEREBY STATE THAT THIS FINAL MAP COMPLIES WITH FINAL MAP PROCEDURES OF THE CITY OF MILPITAS AND THAT THIS FINAL MAP SUBSTANTIALLY CONFORMS TO THE APPROVED TENTATIVE MAP AND THE CONDITIONS OF APPROVAL THEREOF WHICH WERE REQUIRED TO BE FULFILLED PRIOR TO THE FILING OF THE FINAL MAP, AND IT IS TECHNICALLY CORRECT. I HEREBY STATE THAT THE MONUMENTS WILL OCCUPY THE POSITIONS INDICATED BY DECEMBER 2014, AND ARE OF THE CHARACTER INDICATED, AND ARE SUFFICIENT TO ENABLE THE SURVEY TO BE RETRACED.

DATED: _____

CHRISTOPHER S. HARMISON P.L.S.
P.L.S. NO. 7176



RECORDER'S STATEMENT

FILED THIS _____ DAY OF _____, 20____ AT _____. IN BOOK OF
MAPS _____, AT PAGES _____, SERIES NUMBERS _____
AT THE REQUEST OF FIRST AMERICAN TITLE COMPANY

FEE _____

REGINA ALCOMENDRAS
SANTA CLARA COUNTY RECORDER

BY: _____
DEPUTY



CITY OF MILPITAS, SANTA CLARA COUNTY, CALIFORNIA

GENERAL NOTES

1. OWNER/DEVELOPER: D.R HORTON
NORTHERN CALIFORNIA DIVISION
6630 OWENS DRIVE
PLEASANTON, CA 94588
(925) 225-7400
CONTACT: DEAN MILLS
2. CIVIL ENGINEER: CARLSON, BARBEE & GIBSON, INC.
6111 BOLLINGER CANYON ROAD, SUITE 150
SAN RAMON, CA 94583
(925) 866-0322
JASON NERI, RCE 59136
3. SOILS ENGINEER: RMA GROUP
5075 COMMERCIAL CIRCLE, UNIT C
CONCORD, CA 94520
(925) 243-6662
SIMON MAKDESSI
4. BENCHMARK: CITY OF MILPITAS BENCHMARK "CED-MAI," A BRASS DISK IN
MONUMENT WELL AT THE INTERSECTION OF CEDAR WAY AND
SOUTH MAIN STREET.
ELEVATION = 33.940 (NGVD 29).
CITY OF MILPITAS LEVEL GPS SURVEY (12/1999 TO 2/2000).
5. THE CIVIL ENGINEER ASSUMES NO RESPONSIBILITY BEYOND THE ADEQUACY OF HIS DESIGN CONTAINED HEREIN.
6. UNLESS OTHERWISE NOTED, ALL WORK AND MATERIALS SHALL COMPLY WITH STANDARD SPECIFICATIONS, CONSTRUCTION DETAILS, AND STANDARD DRAWINGS (LISTED ON SHEET 11) OF THE CITY OF MILPITAS AVAILABLE IN THE CITY ENGINEER'S OFFICE. IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO OBTAIN PERMITS NECESSARY TO PERFORM THE IMPROVEMENTS IN THESE PLANS FROM THE APPROPRIATE AGENCIES AND TO COMPLY WITH THE AGENCIES' REQUIREMENTS. THE CONTRACTOR MUST COMPLY WITH ALL APPLICABLE NATIONAL, STATE AND LOCAL LAWS.
7. PLANS USED FOR CONSTRUCTION OF PUBLIC FACILITIES PURPOSES MUST BE SIGNED BY THE CITY ENGINEER OR HIS REPRESENTATIVE. ANY SUBSEQUENT CHANGES SHALL BE APPROVED BY THE CITY ENGINEER OR HIS REPRESENTATIVE PRIOR TO CONSTRUCTION.
8. CONSTRUCTION CONTRACTOR AGREES THAT IN ACCORDANCE WITH GENERALLY ACCEPTED CONSTRUCTION PRACTICES, CONSTRUCTION CONTRACTOR SHALL BE REQUIRED TO ASSUME SOLE AND COMPLETE RESPONSIBILITY FOR JOB SITE CONDITIONS DURING THE COURSE OF CONSTRUCTION OF THE PROJECT, INCLUDING SAFETY OF ALL PERSONS AND PROPERTY; THAT THIS REQUIREMENT SHALL BE MADE TO APPLY CONTINUOUSLY AND NOT BE LIMITED TO NORMAL WORKING HOURS, AND CONSTRUCTION CONTRACTOR FURTHER AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER AND DESIGN CIVIL ENGINEER HARMLESS FROM ANY AND ALL LIABILITY, REAL OR ALLEGED, IN CONNECTION WITH THE PERFORMANCE OF WORK ON THIS PROJECT, EXCEPTING LIABILITY ARISING FROM THE SOLE NEGLIGENCE OF CIVIL ENGINEER.
9. CONTRACTOR SHALL POST EMERGENCY TELEPHONE NUMBERS AT THE JOB SITE FOR PUBLIC WORKS, AMBULANCE, POLICE, AND FIRE DEPARTMENTS, AND THOSE AGENCIES RESPONSIBLE FOR MAINTENANCE OF UTILITIES IN THE VICINITY OF THE JOB SITE.
10. DURING CONSTRUCTION IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO PROVIDE FOR SAFE TRAFFIC CONTROL IN AND AROUND THE SITE, TO PROTECT THE GENERAL PUBLIC, AND TO PREVENT UNCONTROLLED ACCESS TO THE SITE AT ALL TIMES. THIS MAY INCLUDE BUT NOT BE LIMITED TO SIGNS, FLASHING LIGHTS, BARRICADES AND FLAG PERSONS.
11. SHOULD IT APPEAR THAT THE WORK TO BE DONE, OR ANY MATTER RELATIVE THERETO, IS NOT SUFFICIENTLY DETAILED OR EXPLAINED ON THESE PLANS, THE CONTRACTOR SHALL CONTACT CARLSON, BARBEE & GIBSON, INC. AT (925) 866-0322 FOR SUCH FURTHER EXPLANATIONS AS MAY BE NECESSARY.
12. CONTRACTOR SHALL PROVIDE PROPER SHORING IN ALL TRENCHES DEEPER THAN FIVE (5) FEET. ANY DAMAGE RESULTING FROM LACK OF SHORING SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR. THE CONTRACTOR SHALL COMPLY WITH ALL OSHA REQUIREMENTS.
13. THE CONTRACTOR SHALL COMPLY WITH THE RULES AND REGULATIONS OF THE STATE CONSTRUCTION SAFETY ORDER.
14. THE CONTRACTOR'S ATTENTION IS DIRECTED TO THE REQUIREMENTS OF THE DIVISION OF INDUSTRIAL SAFETY PERTAINING TO "CONFINED SPACES". ANY MANHOLE, CULVERT, DROP INLET OR TRENCH (WHICH COULD CONTAIN AIR), THAT IS NOT READILY VENTILATED, MAY BE CONSIDERED A "CONFINED SPACE".
15. ENCROACHMENT PERMITS REQUIRED FOR WORK WITHIN EXISTING PUBLIC RIGHTS OF WAY SHALL BE OBTAINED BY THE CONTRACTOR.
16. ALL PUBLIC UTILITIES AND IMPROVEMENTS THAT BECAME DAMAGED DURING CONSTRUCTION SHALL BE COMPLETELY RESTORED TO THE SATISFACTION OF THE CITY ENGINEER.

19. THE CONTRACTOR SHALL CALL CITY OF MILPITAS PUBLIC WORKS FACILITIES INSPECTION AT (408) 586-2884 TO SCHEDULE INSPECTIONS, 48 HOURS PRIOR TO START OF CONSTRUCTION.
18. PRIOR TO COMMENCEMENT OF ANY WORK ON ADJACENT PROPERTY, THE OWNER SHALL OBTAIN WRITTEN PERMISSION FROM AFFECTED PROPERTY OWNERS.
19. EXISTING CURB, GUTTER AND SIDEWALK THAT ARE DAMAGED OR DISPLACED, EVEN THOUGH THEY WERE NOT TO BE REMOVED, SHALL BE REPAIRED OR REPLACED BY THE CONTRACTOR.
20. THE ENGINEER ASSUMES NO RESPONSIBILITY FOR FINAL GRADE OF CONCRETE. THE CONTRACTOR SHALL BE RESPONSIBLE FOR FINAL GRADE OF CONCRETE.
21. THE OWNER'S CIVIL ENGINEER WILL PROVIDE CONSTRUCTION STAKES. THE NUMBER AND LOCATION OF STAKES REQUIRED SHALL BE DETERMINED BEFORE THE CONSTRUCTION BEGINS. ALL STAKING REQUESTS SHOULD BE DIRECTED TO THE ENGINEER A MINIMUM OF 48 HOURS PRIOR TO ACTUAL NEED. ANY ADDITIONAL STAKING OR RESTAKING WILL ONLY BE DONE AS DIRECTED AND AUTHORIZED BY THE OWNER OR HIS AUTHORIZED AGENT.
22. ALL EXISTING ELEVATIONS SHOWN ARE AS MEASURED IN THE FIELD UNLESS OTHERWISE NOTED.
23. OBSTRUCTIONS INDICATED ARE FOR INFORMATION ONLY. IT IS THE CONTRACTOR'S RESPONSIBILITY TO VERIFY THE LOCATION AND DEPTH WITH THE APPROPRIATE AGENCIES. THE CONTRACTOR SHALL NOTIFY UNDERGROUND SERVICE ALERT (U.S.A.) FOR UTILITY LOCATIONS PRIOR TO ANY CONSTRUCTION. PHONE 1-800-227-2600. NEITHER THE OWNER NOR THE CIVIL ENGINEER ASSUMES RESPONSIBILITY THAT THE OBSTRUCTIONS INDICATED WILL BE THE OBSTRUCTIONS ENCOUNTERED.
24. THE CONTRACTOR IS RESPONSIBLE FOR THE PRESERVATION AND OR PERPETUATION OF ALL EXISTING MONUMENTS AND STAKES WITHIN THE CONTRACTOR'S AREA OF WORK. THE CONTRACTOR SHALL NOT DISTURB OR REMOVE ANY MONUMENTS OR STAKES WITHOUT THE PERMISSION OF THE CITY ENGINEER, AND HE SHALL BEAR THE EXPENSE OF RESETING ANY MONUMENTS OR STAKES WHICH MAY BE DISTURBED OR REMOVED WITH OR WITHOUT PERMISSION. THE CONTRACTOR SHALL PROVIDE A MINIMUM OF 15 WORKING DAYS NOTICE TO THE CITY ENGINEER PRIOR TO DISTURBANCE OR REMOVAL OF EXISTING MONUMENTS OR STAKES. THE CONTRACTOR SHALL UTILIZE THE SERVICES OF A CALIFORNIA LICENSED LAND SURVEYOR TO RESET ALL DISTURBED OR REMOVED MONUMENTS AND STAKES OR PROVIDE WITNESS MONUMENTS, AND FILE THE REQUIRED DOCUMENTATION WITH THE COUNTY SURVEYOR PURSUANT TO THE BUSINESS AND PROFESSIONS CODE SECTION 8771.
25. ALL GRADES SHOWN ARE FINISHED GRADES, UNLESS OTHERWISE NOTED.
26. ALL GRADED SLOPES ARE MAXIMUM TWO (2) FEET HORIZONTAL TO ONE (1) FOOT VERTICAL.
27. ALL GRADING SHALL COMPLY WITH CITY OF MILPITAS GRADING ORDINANCE, THIS PLAN, AND THE GEOTECHNICAL INVESTIGATION PREPARED BY RMA GROUP OF NORTHERN CALIFORNIA DATED APRIL 17, 2012 AND ALL SUBSEQUENT ADDENDUMS.
28. UPON COMPLETION OF ROUGH GRADING, ACTUAL THICKNESS (STRUCTURAL SECTION) OF THE BASE MATERIAL AND AC PAVEMENT SHALL BE DETERMINED BASED ON THE RESULTS OF R-VALUES, SAND EQUIVALENTS LABORATORY TESTING. GEOTECHNICAL/SOIL ENGINEER SHALL RECOMMEND THE STRUCTURAL SECTIONS OF STREETS TO THE CITY ENGINEER FOR REVIEW AND APPROVAL.
29. WHERE PAVEMENT IS TO BE EXTENDED, EXISTING IMPROVEMENT ENDS MUST BE SAW-CUT. A.C. OR P.C.C. PAVEMENT REMOVED MUST BE SAW-CUT OR REMOVED TO AN EXPANSION JOINT.
30. THE CONTRACTOR IS RESPONSIBLE FOR THE REPAIR OF PUBLIC IMPROVEMENTS/ FACILITIES DAMAGED BY HIS OPERATIONS INCLUDING BUT NOT LIMITED TO MONUMENTS, BENCHMARKS, STREET PAVEMENT, PAVEMENT MARKINGS, TRAFFIC STRIPING AND SIGNAGE, TRAFFIC LOOPS, FIBER OPTIC, ETC.
31. PROJECT GRADING AND CONSTRUCTION ACTIVITIES SHALL NOT OCCUR OUTSIDE THE HOURS OF 7:00 A.M. TO 7:00 P.M. ON WEEKDAYS AND WEEKENDS, AND SHALL NOT OCCUR ON THE FOLLOWING HOLIDAYS: NEW YEAR'S DAY, MEMORIAL DAY, INDEPENDENCE DAY, LABOR DAY, THANKSGIVING DAY, INCLUDING THE DAY AFTER (NOVEMBER 25), CHRISTMAS DAY, MARTIN LUTHER KING JR.'S BIRTHDAY, LINCOLN'S BIRTHDAY, PRESIDENT'S DAY, AND VETERAN'S DAY, AS PER THE CITY OF MILPITAS NOISE ORDINANCE.
32. TRAFFIC SPEEDS ON ALL UNPAVED AREAS SHALL BE LIMITED TO 15 MPH.
33. A NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM PERMIT (NPDES CONSTRUCTION PERMIT) IS REQUIRED PRIOR TO COMMENCEMENT OF CONSTRUCTION ACTIVITY RELATED TO THIS SITE AND SHALL BE OBTAINED BY THE OWNER AND/OR OWNER'S CONTRACTOR AS APPROPRIATE. ANY DISCHARGE (DURING CONSTRUCTION) OF GROUNDWATER INTO THE DOWNSTREAM STORM SYSTEM MUST BE UNCONTAMINATED. THE CONTRACTOR SHALL MAKE THIS DETERMINATION PRIOR TO ANY DISCHARGE.
34. IF ARCHAEOLOGICAL MATERIALS ARE UNCOVERED DURING GRADING, TRENCHING OR OTHER EXCAVATION, EARTHWORK WITHIN 100' OF THIS AREA SHALL BE STOPPED UNTIL A PROFESSIONAL ARCHAEOLOGIST WHO IS CERTIFIED BY THE SOCIETY OF CALIFORNIA ARCHAEOLOGIST (SCA) OR THE SOCIETY OF PROFESSIONAL ARCHAEOLOGIST (SOPA) HAS HAD AN OPPORTUNITY TO EVALUATE THE SIGNIFICANCE OF THE FIND AND SUGGEST APPROPRIATE MITIGATION MEASURES, IF THEY ARE DEEMED NECESSARY.

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JOINT TRENCH

STREET LIGHT

FUTURE TRAFFIC SIGNAL PLANS

[illegible][illegible]

c b g

**Carlson, Barbee
& Gibson, Inc.**
CIVIL ENGINEERS • SURVEYORS • PLANNERS

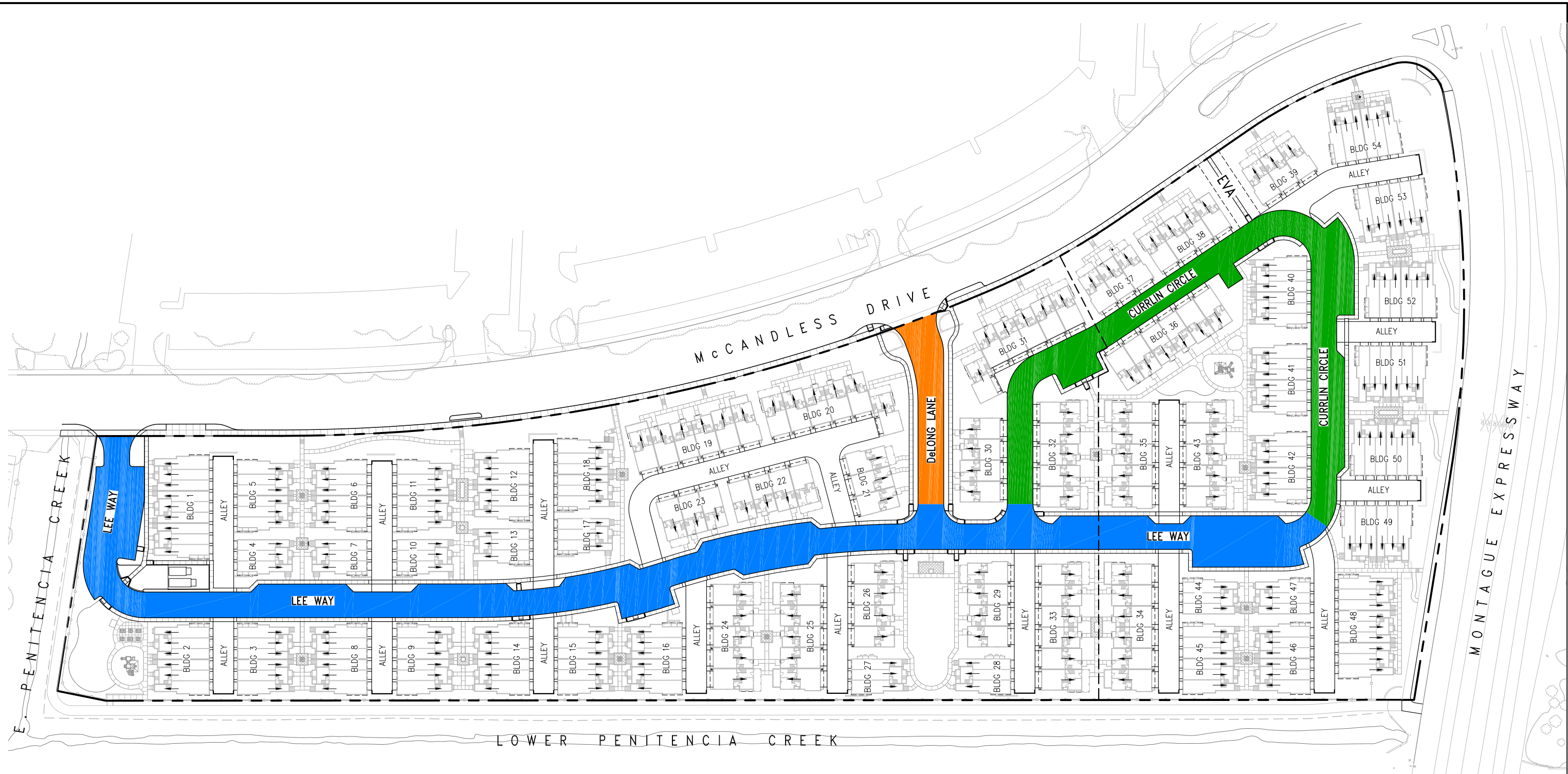
6111 Bollinger Canyon Road, Suite 150 • San Ramon, CA 94583
925-866-0322 • fax 925-866-8875
www.cbarg.com

HARMONY
TRACT 10137
PUBLIC IMPROVEMENT PLANS
TITLE, NOTES, SHEET INDEX & VICINITY MAP
CITY OF MILPITAS
SANTA CLARA COUNTY
CALIFORNIA

SHEET NUMBER
1
OF 134
JOB NUMBER
1933-00

PERMIT NO.: B-SI12-0007

ADDRESS: 1615 McCANDLESS DRIVE



PROPOSED STREET NAMES:
(THRIVING LEGACY)
LEE WAY - BARBARA LEE
DeLONG LANE - DICK DeLONG
CURRLIN CIRCLE - DR. ALBERT CURRLIN

NOTE:
ARROW IN UNITS DEPICTS THE LOCATION
OF THE FRONT DOOR.

STREET NAME EXHIBIT

HARMONY

CITY OF MILPITAS SANTA CLARA COUNTY CALIFORNIA

DATE: JUNE 4, 2012

SCALE: 1:100

Carlson, Barbee
& Gibson, Inc.
CIVIL ENGINEERS • SURVEYORS • PLANNERS

6111 BOLLINGER CANYON ROAD, SUITE 150
SAN RAMON, CALIFORNIA 94583

(925) 966-0322
FAX: (925) 966-8575